LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 3 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1968
No. 471

PERFO-LOG, INC.,

Petitioner,

vs.

WELL SURVEYS, INC., now DRESSER SYSTEMS, INC., and DRESSER INDUSTRIES, INC.,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.

R. WELTON WHANN,
315 West Ninth Street,
Los Angeles, Calif. 90015,

W. D. HART,
P.O. Box 177,
Pauls Valley, Okla. 73075,

WELTON B. WHANN,
315 West Ninth Street,
Los Angeles, Calif. 90015,

Attorneys for Petitioner.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

SUBJECT INDEX

	Page
Citations to Opinions Below	1
Jurisdiction	2
Question Presented	2
Statement of the Case	2
Reasons Relied on for Allowance of the Writ	6
Conclusion	14
Appendix A. Judgment of the United States Court of Appeals for the Tenth Circuit	15
Opinion of the United States Court of Appeals for the Tenth Circuit	16
Findings of Fact and Conclusions of Law, District Court, W. D. Oklahoma, No. 9542	23

INDEX TO APPENDIX B
(In Separate Volume)

Tabulation of Twenty-Three of Respondents' License Agreements Which Cover the Swift Patent Plus One or More Additional Patents ..... App. B. pp. i, ii, iii

The twenty-three package license agreements summarized in the above tabulation 1-180

Letter from Dresser Industries, Inc., "To Licensees under Patents owned by Dresser Industries, Inc.", together with a proposed License Agreement covering the Peterson Patent No. 2,967,994 181-184

Excerpts from the Complaint of Joseph Bancroft & Sons Company v. M. Lowenstein & Sons, Inc. 185-195

Excerpts from Answer in Joseph Bancroft & Sons Company v. Lowenstein & Sons, Inc. 196-199

TABLE OF AUTHORITIES CITED

Cases	Page
American Securit Co. v. Shatterproof Glass Corp., 268 F. 2d 769	9, 11, 14
Baker-Cammack Hosiery Mills v. Davis Co., 181 F. 2d 550	14
Brulotte v. Thys Co.	9, 12, 13
Hensley Equipment Company v. Esco Corporation, 383 F. 2d 252	13
McCullough Tool Co. v. Well Surveys, Inc., 343 F. 2d 381; cert. den. 383 U.S. 933	10, 11
Rocform Corp. v. Acitelli-Standard Concrete Wall, Inc., 367 F. 2d 678	3, 4, 6, 9, 10, 14
Scott Paper Co. v. Marcalus Co.	8
Technograph Printed Circuits, Ltd. v. Bendix Aviation Corp., 218 F. Supp. 1	14
United States v. Loew's, Inc., 371 U.S. 38	8
United States v. Paramount Pictures, Inc., 334 U.S. 131, 77 USPQ 243	8, 12

Rules	
Federal Rules of Civil Procedure, Rule 56	3

Statutes	
United States Code, Title 28, Sec. 1254(1)	2
United States Code, Title 28, Sec. 1338	3
United States Code, Title 35, Sec. 112	7
United States Code, Title 35, Sec. 154	7
United States Code, Title 35, Sec. 271	3

Textbooks	
151 United States Patent Quarterly, p. 305	3
151 United States Patent Quarterly, pp. 307-308	3
154 United States Patent Quarterly, p. 313	1
158 United States Patent Quarterly, p. 119	2

IN THE

Supreme Court of the United States

October Term, 1968
No. .....

PERFO-LOG, INC.,

Petitioner,

vs.

WELL SURVEYS, INC., now DRESSER SYSTEMS, INC., and DRESSER INDUSTRIES, INC.,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.

Petitioner, Perfo-Log, Inc., prays that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Tenth Circuit entered in the above-entitled case on June 4, 1968, which reversed Summary Judgment entered in favor of Petitioner and against Respondents adjudicating the Swift Patent No. 2,554,844 to be misused.

Citations to Opinions Below.

The District Court did not render a formal opinion but did make and enter Findings of Fact, Conclusions of Law and Judgment on the misuse issues, which are reported in 154 USPQ 313. The Findings, Conclusions and Judgment were not reported in the Official Report-

er. The Findings of Fact, Conclusions of Law and Judgment are printed in Appendix A, p. 23.

The Opinion of the Court of Appeals for the Tenth Circuit is not reported in the Official Reporter, but is reported in 158 USPQ 119. The Judgment and Opinion of the Court of Appeals for the Tenth Circuit are printed in Appendix A, pp. 15-22.

Jurisdiction.

The date of the Opinion of the Court of Appeals for the Tenth Circuit is May Term, 1968, and the time of its entry is June 4, 1968.

The jurisdiction of this Court is invoked under 28 USC § 1254(1).

Question Presented.

Whether patent license agreements which (i) cover one important patent and one or more patents of lesser importance but of longer duration, and (ii) contain no provision for the reduction of royalty at the expiration of the important patent, and (iii) contain no termination provision at the will of the licensees until the lapse of varying periods *after* the expiration of the important patent, constitute patent misuse *per se* for they are, in effect, an effort to continue to collect royalty on the important patent after its expiration?

Statement of the Case.

Petitioner refused to take a patent license from respondents, and was thereafter sued by them for patent infringement. Respondents' complaint, filed December 26, 1961, charged petitioner with infringement of 9 patents [R. 1]. The jurisdiction of the District Court

was invoked under Title 28 USC § 1338 and Title 35 USC § 271. Petitioner denied infringement and asserted invalidity and patent misuse as defenses [R. 16, 397]. By Order of Partial Dismissal, 7 patents were eliminated from the case [R. 341]. Only the Swift Patent No. 2,554,844 and the Peterson Patent No. 2,967,994 remain in the case.

Petitioner moved for Summary Judgment under Rule 56 of the Federal Rules of Civil Procedure adjudging that the Swift patent is unenforceable because respondents by their licensing practices, require the payment of royalties under the Swift patent beyond its expiration date [R. 768]. Petitioner's Motion for Summary Judgment was based, in part, [R. 796] on *Rocform Corp. v. Acitelli-Standard Concrete Wall, Inc.* (C.A. 6, 1966), 367 F. 2d 678, 680 and 681, 151 USPQ 305, 307, 308, which held:

> "We believe such a contract, when it contains no diminution of license fee at the expiration of the most important patent and contains no termination clause at the will of the licensee, constitutes, in effect, an effort to continue to collect royalties on an expired patent. *Brulotte v. Thys Co., supra; American Securit Co. v. Shatterproof Glass Corp., supra.*"

The District Court, espousing the rule of *Rocform*, held the Swift patent to be unenforceable because of misuse by respondents in their licensing practices:

> "7. A license agreement when it contains no diminution of license fee at the expiration of the most important patent and contains no termination clause at the will of the licensee constitutes in

effect an effort to continue to collect royalties on an expired patent, Rockform Corp. v. Acitelli-Standard Concrete Wall Inc., (C.A. 6, 1966), 367 F.2d 678, 680 and 681, 151 USPQ 305, 307, 308."

(District Court, Appendix A. p. 41).

"9. The license agreements between plaintiff and Jetco, Star, French, Luling, Maroney, Petroleum, Shelwell and Titan constitute in effect an effort to continue to collect royalties on the Swift Patent after its expiration because said agreements contain no diminution of license fee at the expiration of the important Swift Patent and contain no termination clause at the will of the licensee."

(District Court, Appendix A. p. 42).

The Court of Appeals reversed the District Court, proclaiming its *disagreement* with the *Rocform* decision:

"* * * If the Rocform decision is taken as holding that a package license, including both important and unimportant patents, is misuse per se when there is no diminution in royalty, or provision for termination, after the expiration of an important patent, *we respectfully disagree* and adhere to our decision in the first McCullough case. * * *" (Emphasis added).

(Appendix A, p. 21).

Significantly, the Court of Appeals did not upset the ruling of the District Court as to the relative importance of the Swift patent and other patents, the absence of provisions for diminution in royalty at the expiration of the Swift patent and the absence of termination clauses at the will of the licensees (until the lapse of

varying periods after the expiration of the Swift patent):

> "The district court found that licensees under the immunity agreements could not terminate until after the expiration of the Swift patent; and that there was no provision for change in royalty base or for diminution in royalty after the expiration of the Swift patent. * * *"
>
> (The Tenth Circuit Opinion, Appendix A, p. 18).
>
> "* * * Perfo-Log says that the licenses which it submitted in support of a summary judgment motion establish per se a misuse of the Swift patent. Prime reliances is had on eight agreements which covered both the Swift and the Peterson patents. These agreements were not terminable at the will of the licensee until the lapse of varying periods after the expiration of the Swift patent. The uniform royalty rate of 5% was not diminished after the expiration of Swift. * * *"
>
> (The Tenth Circuit Opinion, Appendix A, p. 19).

The holding of the District Court was premised on 23 package licenses[1]—with particular emphasis upon 8 of those licenses—granted by respondents during the period June 1, 1961 to June 9, 1965[2] [R. 954, 1105, 1124, 1199, 1690, 1249, 1259, 1286, 1305, 1323, 803,

---

[1]The 23 package licenses are contained in Appendix B, pp. 1-180.

[2]A tabulation of the 23 package licenses granted by respondents showing the licensees; the effective dates; the patents included; the royalty payable; the earliest dates on which the licensees have the right to terminate; the other dates on which the licensees have the right to terminate; and the terms of the licenses unless otherwise terminated according to their provisions appears in Appendix B, pp. i, ii and iii.

812, 1333, 820, 830, 839, 847, 855, 1379, 1392, 863, 1419, 1428].

As in *Rocform,* the 23 package licenses included one important patent (the Swift patent) and one or more patents of lesser importance but of longer duration (*e.g.,* the Peterson patent) [R. 891-896, 1685-8 (see Appendix B, pp. 181-184), 1592, 1594].

As in *Rocform,* the 23 package licenses contain no provision for diminution in royalty at the expiration of the important Swift patent [R. 957, 1109, 1127, 1203, 1694, 1253, 1262, 1289, 1308, 1326, 806, 815, 1336, 823, 833, 842, 850, 858, 1382, 1395, 866, 1422, 1431].

As in *Rocform,* the 23 package licenses accord the licensees no right to terminate (until the lapse of varying periods after the expiration of the Swift patent). [R. 960, 1111, 1130, 1205, 1696, 1255, 1265, 1292, 1310, 1329, 809, 817, 1338, 826, 836, 844, 852, 860, 1384, 1397, 868, 1424, 1433].

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

The decision of the Court of Appeals for the Tenth Circuit in the instant case conflicts with the decision of the Court of Appeals for the Sixth Circuit in *Rocform Corporation v. Acitelli-Standard Concrete Wall, Inc.,* (1966) 367 F. 2d 678, 680, 681, on the same matter:

In *Rocform,* the Court of Appeals for the Sixth Circuit said:	In the instant case, the Court of Appeals for the Tenth Circuit said:
"The District Judge, however, did not find this	"If the Rocform decision is taken as holding that a

standard licensing agreement illegal per se because it represented mandatory patent package licensing. He found plaintiff's license agreement illegal because it contained no termination clause and hence represented an attempted illegal extension of the patent in suit."

* * *

"We believe such a contract, when it contains no diminution of license fee at the expiration of the most important patent and contains no termination clause at the will of the licensee, constitutes, in effect, an effort to continue to collect royalties on an expired patent. Brulotte v. Thys Co., supra; American Securit Co. v. Shatterproof Glass Corp., supra."

package license, including both important and unimportant patents, is misuse per se when there is no diminution in royalty, or provision for termination, after the expiration of an important patent, *we respectfully disagree* and adhere to our decision in the first McCullough case." (Emphasis added).

A United States patent monopoly is statutorily limited in terms of subject matter by the patent claims (35 USC § 112) and in respect to time by the 17 year life specified by 35 USC § 154.

This Court has emphasized repeatedly the *per se* illegality inherent in any attempt to expand the patent monopoly by the use of private arrangements calculated to circumvent either parameter. Thus the "tying cases"

have condemned as *per se* misuse, all private contracts which, directly or indirectly, enlarge the scope of a patent to embrace unpatented subject matter.

In this context this Court has emphasized as well the unique nature of each patent, and the concomitant principle that to insure the integrity of the limits of each grant, no patent may borrow quality from another. In *United States v. Loew's, Inc.*, (1962) 371 U.S. 38, 46, 47, this Court quoted verbatim from the *Paramount* case decided 14 years earlier:

> "* * * In United States v. Paramount Pictures, Inc., 334 U.S. 131, 156-159, 77 USPQ 243, 252-253, the principle of the patent cases was applied to copyrighted feature films which had been block booked into movie theaters. The Court reasoned that
>
> "'* * * It is said that reward to the author or artist serves to induce release to the public of the products of his creative genius. But the reward does not serve its public purpose if it is not related to the quality of the copyright. Where a high quality film greatly desired is licensed only if an inferior one is taken the latter borrows quality from the former and strengthens its monopoly by drawing on the other. The practice tends to equalize rather than differentiate the reward for the individual copyrights. * * *'"

With equal firmness this Court has emphasized that all attempts to extend the *term* of a patent "by contract or any form of private arrangement" *Scott Paper Co. v. Marcalus Co.* including uses "by a patentee of royalty

agreements that project beyond the expiration date of a patent" are "unlawful *per se*" *Brulotte v. Thys. Co.*

Guided by the principles of *Brulotte* and *Shatterproof*[3] the Court of Appeals for the Sixth Circuit, one judge dissenting, held in *Rocform*, 367 F. 2d 678, 680 and 681:

> "The District Judge, however, *did not find this standard licensing agreement illegal per se because it represented mandatory patent package licensing.* He found plaintiff's license agreement illegal because it contained no termination clause and hence represented an attempted illegal extension of the patent in suit." (Emphasis added.)
>
> * * *
>
> "In the instant case the District Judge said: 'Upon expiration of the patent in suit the consideration for the grant of the license becomes substantially devaluated. * * *' The District Judge's findings make it clear that the patent in suit which expires in 1967 is the most important consideration for the license.

---

[3]In *American Securit Co. v. Shatterproof Glass Corp.* (1959) 268 F. 2d 769, 777 the Court of Appeals for the Third Circuit struck down, as misuse *per se*, a license provision which is substantially identical to paragraph 4.03 of the 23 package licenses involved in the instant case:

> "(6) We conclude also, *and quite apart from all of the foregoing,* that Paragraph 8(a) of Securit's Standard Licensing Agreement which provides that that agreement shall continue 'in full force and effect to the expiration of the last to expire of any' of Securit's patents set out in 'Schedule A' constitutes a patent misuse for it extends the payment of royalties of patents under patents which may expire to the expiration date of that patent most recently granted to Securit. Indeed the expiration clause of the contract works an 'aggravating hardship' on the licensee as Judge Leahy stated, in that it demands the renunciation of all patents, whether wanted or unwanted under the license." (Emphasis Added).

"[2] We believe that the District Judge was correct in viewing this licensing agreement as an illegal attempt to extend the patent in suit. It contains no termination clause running to the benefit of the licensee. See 3A Corbin, Contracts § 761 (1960). After the expiration of the patent in suit, Rocform's licensees would continue to pay the same fees as are provided during the life of the crucial patent."

* * *

"* * * Rather we deal with a licensing arrangement where one important patent (about to expire) is grouped with others of longer duration for 'leverage.' Cf. *American Securit Co. v. Shatterproof Glass Corp., supra.*

"We believe such a contract, when it contains no diminution of license fee at the expiration of the most important patent and contains no termination clause at the will of the licensee, constitutes, in effect, an effort to continue to collect royalties on an expired patent. *Brulotte v. Thys Co., supra; American Securit Co. v. Shatterproof Glass Corp., supra.*"

The dissenting judge in *Rocform* premised his opinion upon the conflicting decision of the Court of Appeals for the Tenth Circuit in *McCullough Tool Co. v. Well Surveys, Inc.*, 343 F. 2d 381, Cert. den. 383 U.S. 933.

In the instant case the Tenth Circuit has flatly rejected the majority view in *Rocform* to espouse instead the theory of the *Rocform* dissent and to adhere to its

decision in the first *McCullough* case.[4] The resulting conflict in decision is acknowledged on the face of the decision below which states:

> "The district court found that licensees under the immunity agreements could not terminate until after the expiration of the Swift patent; and that there was no provision for change in royalty base or for diminution in royalty after the expiration of the Swift patent. * * *"
>
> (Appendix, A, p. 18).

> "* * * Prime reliances is had on eight agreements which covered both the Swift and the Peterson patents. These agreements were not terminable at the will of the licensee until the lapse of varying periods after the expiration of the Swift patent. The uniform royalty rate of 5% was not diminished after the expiration of Swift. * * *"
>
> (Appendix A, p. 19).

> "* * * If the Rocform decision is taken as holding that a package license, including both important and unimportant patents, is misuse per se when there is no diminution in royalty, or provision for termination, after the expiration of an important patent, *we respectfully disagree and adhere to our decision in the first McCullough* case. The relative importance of patents has no significance if a licensee is given the choice to take a patent alone or

---

[4]Overlooking the express language (of *Shatterproof*, 268 F. 2d 769, 777) *"and quite apart from all of the foregoing"*, the Court of Appeals for the Tenth Circuit in the first McCullough case (*McCullough Tool Co. v. Well Surveys, Inc.*, 343 F. 2d 381, 409, 410) erroneously distinguished *Shatterproof*.

in combination on reasonable terms. Freedom of choice is the controlling question." (Emphasis added).

(Appendix A, p. 21).

Emphasizing its faulty premise that "Freedom of choice is the controlling question", the Court of Appeals for the Tenth Circuit stated:

"* * * *The relative importance of patents has no significance* if a licensee is given the choice to take a patent alone or in combination on reasonable terms. * * *" (Emphasis added).

In short, the Tenth Circuit has held that, assuming "freedom of choice" private arrangements which extend the monopoly of an important patent into the post-expiration period by grouping the important patent with one or more patents of lesser importance are not *per se* illegal at all. Ignoring this Court's contrary admonition in *Brulotte* the Tenth Circuit has effectively held that the rule of reason is to be applied to post-expiration royalty agreements, that such agreements are "reasonable" if the licensee is not "forced" to accept them, and that private parties are, by the ruse of such arrangements, free to extract post-expiration royalties from the public. And disregarding this Court's contrary mandate in *Paramount* and *Loew's*, the Tenth Circuit has effectively held that a patent "of lesser importance" (*e.g.*, the Peterson patent) may be grouped with an important patent (*e.g.*, the Swift patent) so as to borrow quality from that important patent.

The need for review of the decision in the instant case is readily apparent when it is recognized that the objectionable conflict in decisions is but the most recent

manifestation of the confusion in the lower courts consequent from this Court's *per se* condemnation of post-expiration royalties in *Brulotte*—while at the same time refusing to deal with the effect of the requirement, in package licenses, that licensees pay undiminished royalties when one or more but not all of the licensed patents has expired. A recent expression of the confusion is found in *Hensley Equipment Company v. Esco Corporation* (C.A. 5, 1967) 383, F. 2d 252, 264, 265:

> "* * * The Court (in *Brulotte*) held that no royalties could be collected which accrued after expiration of the last patent incorporated into the machine, as 'a projection of the patent monopoly after the patent expires is not enforceable.' *Significantly, the Court voiced no objection to the fact that the royalty rate did not vary when some, but less than all, of the patents incorporated into the device expired.* Compare American Securit Co. v. Shatterproof Glass Corp., 268 F.2d 769 (3rd Cir.), cert. denied, 361 U.S. 902, 80 S.Ct. 210, 4 L.Ed. 2d 157 (1959); Ar-Tik Systems, Inc. v. Dairy Queen, Inc., 302 F.2d 496 (3rd Cir., 1962), and Rocform Corp. v. Acitelli-Standard Concrete Wall, Inc., 367 F.2d 678 (6th Cir., 1966); Technograph Printed Circuits, Ltd. v. Bendix Aviation Corp., 218 F.Supp. 1, 48-49 (D.Md., 1963), aff'd, 327 F.2d 497 (4th Cir., 1964). (Emphasis added). (Parenthetical insertion added).
>
> "* * * This agreement is one step further from illegal extension of royalty payments than the situation in Brulotte v. Thys Co., supra, where the court *refused* to disapprove a requirement that royalties on an item embodying the inventions of

more than one patent be maintained when some but less than all of the patents had expired." (Emphasis added).

The question presented by this Petition extends far beyond the interests of Petitioner. Package license agreements typified by those in issue, are the most widely used form of license agreement in U.S. industry today. The 23 package licenses in issue and the package licenses involved in *Rocform, Shatterproof, Baker-Cammack Hosiery Mills v. Davis Co.* (C.A. 4, 1950) 181 F. 2d 550, 569, 573, *Technograph Printed Circuits, Ltd. v. Bendix Aviation Corp.*, (D.C. Md. 1963) 218 F. Supp. 1, 48-49, and *Joseph Bancroft & Sons Company v. M. Lowenstein & Sons, Inc.* (Appendix B, pp. 185-199) are but a few examples.

An authoritative ruling from this Court on the issue of package licensing is long overdue.

Conclusion.

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

R. WELTON WHANN,
W. D. HART,
WELTON B. WHANN,
Attorneys for Petitioner.

Dated August 30, 1968.

APPENDIX A.

Judgment of the United States Court of Appeals for the Tenth Circuit.

MAY TERM, TUESDAY, JUNE 4TH, 1968.

Before Honorable Jean S. Breitenstein, Honorable Oliver Seth and Honorable John J. Hickey, Circuit Judges.

Well Surveys, Inc., now Dresser Systems, Inc., and Dresser Industries, Inc., Appellants, vs. Perfo-Log, Inc., Appellee. 9649.

Appeal from the United States District Court for the Western District of Oklahoma.

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Oklahoma and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said district court is reversed and the case is remanded for trial on the merits.

It is further ordered that appellants have and recover of and from appellee their costs herein.

Costs of appellant:

Clerk: Flat Fee $25.00

[Seal]

Opinion of the United States Court of Appeals for the Tenth Circuit.

United States Court of Appeals, Tenth Circuit, No. 9649—May Term, 1968.

Well Surveys, Inc., now Dresser Systems, Inc. and Dresser Industries, Inc., Appellants, v. Perfo-Log, Inc., Appellee.

Appeal from the United States District Court for the Western District of Oklahoma.

Filed June 4, 1968.

Rufus S. Day, Jr. (Richard M. Donaldson, James A. Peabody, and Robert K. Schumacher were with him on the brief) for Appellants.

Welton B. Whann (W. D. Hart was with him on the brief) for Appellee.

Before BREITENSTEIN, SETH and HICKEY, Circuit Judges.

BREITENSTEIN, Circuit Judge.

Appellant-plaintiff Well Surveys, Inc.,[1] sued appellee-defendant Perfo-Log, Inc., for infringement of the Swift Patent No. 2,554,844 and the Peterson Patent No. 2,967,994. Perfo-Log denies infringement and asserts patent misuse as a defense. The trial court granted summary judgment for Perfo-Log on the ground of misuse of the Swift patent.

This litigation is an episode in the prolonged controversy between WSI and McCullough Tool Co. over the Swift patent. In McCullough Tool Co. v. Well

[1]Well Surveys, Inc., the original plaintiff, has changed its name to Dresser Systems, Inc., and has transferred the patents involved herein to its parent corporation, Dresser Industries, Inc. Herein the plaintiffs will be referred to as WSI.

Surveys, Inc., 343 F.2d 381, cert. denied 383 U.S. 933, we upheld the validity of the Swift patent and said that WSI had purged itself of misuse in 1956 by the adoption of different licensing practices. WSI brought further proceedings against McCullough which have been disposed of in our recently filed opinion Nos. 9426 and 9427, McCullough Tool Co. v. Well Surveys, Inc., ... F.2d ..... McCullough is admittedly assisting Perfo-Log in the present suit.

The Swift patent covers a system of measuring radiation from the earth formations around a well casing and, at the same time, locating the collars of the casing as a positive indication of the depth at which particular radiation is measured. The expiration date of the Swift patent is May 29, 1968.

The Peterson patent relates to a type of collar locator which can be used with the Swift system. It expires January 10, 1978. Various other collar locators can be used for the same purpose as Peterson.

Perfo-Log moved for summary judgment on the ground that WSI had misused the Swift patent. The motion was originally supported by 8 immunity agreements given by WSI to various well loggers. Sixty-five other immunity agreements were later filed. In opposition WSI submitted several affidavits to which reference will be made later. At the conclusion of the argument on Perfo-Log's motion, WSI requested permission to file a motion for partial summary judgment adjudicating the misuse issue in its favor. No objection was made and the court granted WSI permission to file.

The district court found that licensees under the immunity agreements could not terminate until after the expiration of the Swift patent; and that there was no provision for change in royalty base or for diminution in royalty after the expiration of the Swift patent. On the basis of these findings the court held that WSI had misused the Swift patent and granted the Perfo-Log motion for summary judgment. The WSI motion for partial summary judgment was denied.

The courts withhold aid to a party who has used his patent right contrary to the public interest.[2] A patentee is not entitled to continue to receive "the benefit of an expired monopoly."[3] In our first McCullough decision we reviewed the principle of misuse and the package licensing of patents. We concluded that package licensing was not misuse in the absence of coercion and said:[4]

> "* * * in order to constitute a misuse, there must be an element of coercion, such as where there has been a request by a prospective licensee for a license under less than all of the patents and a refusal by the licensor to grant such a license."

In the second McCullough decision[5] we considered claims that WSI had misused its patents through monop-

---

[2]Morton Salt Co. v. G. S. Suppiger Co., 314 U.S. 488, 492.

[3]See Scott Paper Co. v. Marcalus Manufacturing Co., 326 U.S. 249, 257.

[4]McCullough Tool Co. v. Well Surveys, Inc., 10 Cir., 343 F. 2d 381, 408, cert. denied 383 U.S. 933.

[5]McCullough Tool Co. v. Well Surveys, Inc., 10 Cir.,..... F.2d ....., opinion filed May 16, 1968.

olization of the well-logging industry, improper extension of its patent monopoly, and unfounded infringement threats and litigation. We held that the showing made was insufficient to establish a change in the licensing practices which we approved in the first McCullough decision and rejected the claims of misuse.

With this background we come to the case at bar. Perfo-Log says that the licenses which it submitted in support of a summary judgment motion establish per se a misuse of the Swift patent. Prime reliances is had on eight agreements which covered both the Swift and the Peterson patents. These agreements were not terminable at the will of the licensee until the lapse of varying periods after the expiration of the Swift patent. The uniform royalty rate of 5% was not diminished after the expiration of Swift. The royalty provision reads thus:

> "3.02 Company agrees to pay DII [WSI] as royalty on each Radioctivity Well Surveying operation conducted by Company, which, if unlicensed, would infringe the Patent Rights of DII [WSI] during the term of this agreement an amount equal to five per cent (5%) of the gross charge (exclusive of mileage) made for the survey so conducted or a sum of ten dollars ($10.00), whichever is greater."

The literal language does not exact a royalty on an expired patent because payment is required only for op-

erations which infringe a patent right of WSI. There can be no infringement of an expired patent.[6]

Although the royalty rate does not change, the base for that rate changes because after the expiration of Swift, no royalty is payable unless the Peterson patent is used in the logging operations. The lack of diminution in royalty rate for the use of Peterson without Swift and the provisions for termination do not of themselves establish coercion. The question is whether the licensee was forced to enter into a package arrangement. Perfo-Log offered nothing on this point but relied on the agreements. WSI submitted the affidavits of two officers to show a continuation of the license practices approved in our first McCullough decision. One of the affidavits stated:

> "Every prospective licensee was offered a license under any of the radioactivity well surveying patents of Dresser Industries, Inc. and/or Well Surveys, Inc. which it desired, individually or collectively, upon negotiated reasonable terms. No licensee or prospective licensee was ever coerced to pay royalty on or for any operations covered by any expired patent."

To support its argument that the licenses per se establish patent misuse, Perfo-Log relies on the decision in Rocform Corp. v. Acitelli-Standard Concrete Wall, Inc., 6 Cir., 367 F.2d 678. That case concerned patents, one of which was of basic importance, for pouring con-

---

[6]Atlas-Pacific Engineering Co. v. Geo. W. Ashlock Co., 9 Cir., 339 F.2d 288, 289, note 1, cert. denied 382 U.S. 842.

crete basement walls. The license agreement covered several patents and provided no royalty reduction after the expiration of the basic patent. The Sixth Circuit held that the lack of diminution in royalty and the absence of an appropriate termination clause established misuse. One judge dissented on the basis of our first McCullough decision. Id. at 682. In its statement of facts the Sixth Circuit said that Rocform offered to license only under its standard package agreement. In the case at bar, the affidavits submitted by WSI show a willingness to license any or all patents under reasonable, negotiated terms. If the Rocform decision is taken as holding that a package license, including both important and unimportant patents, is misuse per se when there is no diminution in royalty, or provision for termination, after the expiration of an important patent, we respectfully disagree and adhere to our decision in the first McCullough case. The relative importance of patents has no significance if a licensee is given the choice to take a patent alone or in combination on reasonable terms. Freedom of choice is the controlling question.[7]

Perfo-Log argues that the district judge drew a permissible inference of misuse from the licenses and that under United States v. United States Gypsum Co., 333 U.S. 364, 394, this inference is binding on the appellate court unless clearly erroneous. The difficulty is that

---

[7]We find nothing in Hazeltine Research, Inc. v. Zenith Radio Corp., 7 Cir., 388 F.2d 25, that conflicts with our conclusions. It is there recognized that economic coercion must be shown.

the inference was drawn on a motion for summary judgment. In such a situation "the inferences to be drawn from the underlying facts * * * must be viewed in the light most favorable to the party opposing the motion."[8] Here the inference runs contrary to the uncontroverted showing by WSI that it offered to license any or all of its patents on reasonable, negotiated terms. In such circumstances the inference is not controlling. At the most it establishes a genuine issue as to a material fact and, under the provisions of Rule 56(c), F.R.Civ.P., precludes the grant of a summary judgment.

WSI urges that summary judgment on the misuse issue should have been given in its favor. Although we are convinced that the showing by WSI's affidavit of readiness to license any or all of its patents on reasonable terms is sufficient to defeat the Perfo-Log motion for summary judgment, we cannot say that such showing entitles WSI to the relief it seeks. The fact finder must weigh the provisions of the license agreements against the facts surrounding the grant of those licenses. In our opinion this is not a case for the use of the summary judgment procedure.

The judgment is reversed and the case is remanded for trial on the merits.

---

[8]United States v. Diebold, Inc., 369 U.S. 654, 655. See also Frey v. Frankel, 10 Cir., 361 F.2d 437, 442.

Findings of Fact and Conclusions of Law, District Court, W. D. Oklahoma, No. 9542.

District Court, W. D. Oklahoma.

Well Surveys, Inc., et al. v. Perfo-Log, Inc. No. 9542. Decided June 26, 1967.

CHANDLER, Chief Judge.

FINDINGS OF FACT

1. Plaintiff Well Surveys, Inc., now Dresser Systems, Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and has a place of business at Tulsa, Oklahoma, and since April 27, 1964, has had its principal place of business at Houston, Texas.

2. Plaintiff Dresser Industries, Inc. is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, has its principal place of business at Dallas, Texas and is the lawful owner of the claims asserted herein by Well Surveys, Inc., now Dresser Systems, Inc. Plaintiffs will be referred to collectively herein as "Plaintiff."

3. Defendant Perfo-Log, Inc. is a corporation duly organized and existing under and by virtue of the laws of the State of Oklahoma, and has a regular and established place of business at Norman, Oklahoma.

4. This action arises under the Patent Law of the United States, Title 35 U.S.C. Section 271 and jurisdiction is founded upon Title 28 U.S.C. Section 1338.

5. On May 29, 1951, United States Patent No. 2,554,844 (hereinafter "The Swift Patent") for Casing Collar Locator was issued to plaintiff as the assignee of Lawrence M. Swift.

6. On January 10, 1961, United States Patent No. 2,967,994 (hereinafter "The Peterson Patent") for Casing Joint Locator was issued to plaintiff as the assignee of Glen Peterson.

7. The Swift Patent will expire on May 29, 1968.

8. The Peterson Patent will expire on January 10, 1978.

9. The Swift Patent is an important and crucial patent which covers a system for making a combination radioactivity and casing collar log.

10. The Peterson Patent is an unimportant patent which covers a specific form of casing collar locator, i.e. a casing collar locator which includes two coils and one magnet.

11. Effective December 1, 1963, plaintiff and Jetco, Inc. (hereinafter "Jetco") executed an immunity agreement.

12. Effective January 1, 1964, plaintiff and Star Jet Oil Well Service, Inc. (hereinafter "Star") executed an immunity agreement.

13. Effective February 1, 1964, plaintiff and Lewis L. French, d/b/a French Well Surveys (hereinafter "French") executed an immunity agreement.

14. Effective February 24, 1964, plaintiff and Luling Perforators, Inc. (hereinafter "Luling") executed an immunity agreement.

15. Effective July 1, 1964, plaintiff and Maroney Electrical Well Service, Inc. (hereinafter "Maroney") executed an immunity agreement.

16. Effective August 1, 1964, plaintiff and Petroleum Surveys Corporation (hereinafter "Petroleum") executed an immunity agreement.

17. Effective October 1, 1964, plaintiff and Shelwell Services, Inc. (hereinafter "Shelwell") executed an immunity agreement.

18. Effective March 1, 1965, plaintiff and Titan Perforators, Inc. (hereafter "Titan") executed an immunity agreement.

19. The agreements between plaintiff and Jetco, Star, French, Luling, Maroney, Petroleum, Shelwell and Titan cover only the Swift Patent and the Peterson Patent.

20. Jetco, Star, French, Luling, Maroney, Petroleum, Shelwell and Titan cannot terminate their agreements with plaintiff until after the Swift Patent expires. Paragraph 4.02 provides:

> *"Company may terminate this Agreement as of the fifth anniversary date hereof* or as of any successive anniversary date thereafter by giving WSI written notice of cancellation at least sixty (60) days prior to the anniversary date on which cancellation is to take effect." (Emphasis Added)

21. Jetco, Star, French, Luling, Maroney, Petroleum, Shelwell and Titan are obligated to pay accrued royalties to plaintiff after the Swift Patent expires. Paragraph 4.04 provides:

> *"Termination of this Agreement shall not affect the obligations of Company to make any payments which shall have accrued up to the date of such termination,* and the fact that WSI shall not have terminated this Agreement pursuant to Section 4.01 because of one or more defaults by Company shall not prejudice the right of WSI to effect termination for a continuing or subsequent default." (Emphasis Added)

22. Plaintiff has no right to terminate its agreement with Jetco, Star, French, Luling, Maroney, Petroleum, Shelwell and Titan unless they breach their agreements and fail to cure the breach within sixty (60) days after notice from plaintiff. Paragraph 4.01 provides:

> "If Company shall neglect or fail to render reports and make payments as and when due hereunder or shall otherwise be in default of any obligation under this Agreement, WSI shall have the right to give written notice thereof to Company, and if within sixty (60) days from and after the date of such notice Company shall not have cured such default, then WSI may, at its option, cause this Agreement to terminate forthwith by giving written notice to that effect to Company."

23. The term of the aggreements between plaintiff and Jetco, Star, French, Luling, Maroney, Petroleum, Shelwell and Titan, unless terminated in accordance with Findings of Fact Nos. 20 and 22, is from the effective date of each agreement to the expiration of the Peterson Patent on January 10, 1978. Paragraph 4.03 provides:

> "Unless otherwise terminated pursuant to the provisions hereof, this Agreement shall continue in full force and effect until the expiration date of the last patent to expire under which Company is granted immunity by this Agreement."

24. Jetco, Star, French, Luling, Maroney, Petroleum, Shelwel and Titan, are obligated to pay plaintiff a royalty of five percent (5%) of the gross charge (exclusive of mileage) or a sum of ten dollars ($10.00),

whichever is greater, for each Radioactivity Well Surveying operation conducted during the term of the agreements. Paragraph 3.02 provides:

> "Company agrees to pay WSI as royalty on each Radioactivity Well Surveying operation conducted by Company, which, if unlicensed, would infringe the Patent Rights of WSI during term of this agreement an amount equal to five percent (5%) of the gross charge (exclusive of mileage) made for the survey so conducted or a sum of ten dollars ($10.00), whichever is the greater."

25. The agreements between plaintiff and Jetco, Star, French, Luling, Maroney, Petroleum, Shelwell and Titan do not provide for a change in the royalty base at the expiration of the Swift Patent on May 28, 1968.

26. The agreements between plaintiff and Jetco, Star, French, Luling, Maroney, Petroleum, Shelwell and Titan do not provide for the diminution of royalty at the expiration of the Swift Patent on May 28, 1968.

27. The agreements between plaintiff and Jetco, Star, French, Luling, Maroney, Petroleum, Shelwell and Titan do not provide that royalty is no longer payable under the Swift Patent at the expiration of the Swift Patent on May 28, 1968.

28. License agreements granted by plaintiff which cover only the Swift Patent require the payment of a royalty of five percent (5%) of the gross charge (exclusive of mileage) or ten dollars ($10.00), whichever is greater.

29. License agreements granted by plaintiff which cover the Swift Patent and the Peterson Patent require the payment of a royalty of five percent (5%) of the

gross charge (exclusive of mileage) or ten dollars ($10.00), whichever is greater.

30. License agreements granted by plaintiff which cover the Swift Patent and Patent No. 2,810,076, require the payment of a royalty of five percent (5%) of the gross charge (exclusive of mileage) or ten dollars ($10.00) whichever is greater.

31. License agreements granted by plaintiff which cover the Swift Patent, the Peterson Patent and Patent No. 2,810,076, require the payment of a royalty of five percent (5%) of the gross charge (exclusive of mileage) or ten dollars ($10.00) whichever is greater.

a. Effective July 1, 1963, plaintiff and J. M. Barnes and H. H. Hartman, a partnership, d/b/a Goes Perforating and Logging (hereinafter "Goes") executed an immunity agreement.

b. Effective January 1, 1965, plaintiff and Rector Oil Well Services, Inc. (hereafter "Rector") executed an immunity agreement.

c. Effective April 15, 1965, plaintiff and Mustang Electrical Services, Inc. (hereafter "Mustang") executed an immunity agreement.

d. The agreements between plaintiff and Goes, Rector, and Mustang cover only the Swift Patent, and Peterson Patent and the Mardock Patent No. 2,810,076 (hereinafter "The Mardock Patent").

e. On October 15, 1957, the Mardock Patent was issued to plaintiff.

f. The Mardock Patent will expire on October 15, 1974.

g. The Mardock Patent is an unimportant patent which covers a system of radioactive tracer logging.

h. Goes, Rector and Mustang cannot terminate their agreements with plaintiff until after the Swift Patent expires. Paragraph 4.02 provides:

> *"Company may terminate this Agreement as of the fifth anniversary date hereof* or as of any successive anniversary date thereafter by giving WSI written notice of cancellation at least sixty (60) days prior to the anniversary date on which cancellation is to take effect."

i. Goes, Rector and Mustang are obligated to pay accrued royalties to plaintiff after the Swift Patent expires. Paragraph 4.04 provides:

> *"Termination of this agreement shall not affect the obligations of Company to make any payments which shall have accrued up to the date of such termination,* and the fact that WSI shall not have terminated this Agreement pursuant to Section 4.01 because of one or more defaults by Company shall not prejudice the right of WSI to effect termination for a continuing or subsequent default."

j. Plaintiff has no right to terminate its Agreement with Goes, Rector and Mustang unless they breach their agreements and fail to cure the breach within sixty (60) days after notice from plaintiff. Paragraph 4.01 provides:

> "If Company shall neglect or fail to render reports and make payments as and when due hereunder or shall otherwise be in default of any obligation under this Agreement, WSI shall have the right to give written notice thereof to Company,

and if within sixty (60) days from and after the date of such notice Company shall not have cured such default, then WSI may, at its option, cause this Agreement to terminate forthwith by giving written notice to that effect to Company."

k. The term of the agreements between plaintiff and Goes, Rector and Mustang unless terminated in accordance with Findings of Facts Nos. i. and k. is from the effective date of each agreement to the expiration of the Peterson Patent on January 10, 1968. Paragraph 4.03 provides:

"Unless otherwise terminated pursuant to the provisions hereof, this Agreement shall continue in full force and effect until the expiration date of the last patent to expire under which Company is granted immunity by this Agreement."

1. Goes, Rector and Mustang are obligated to pay plaintiff a royalty of five percent (5%) of the gross charge (exclusive of mileage) or a sum of ten dollars ($10.00) whichever is greater, for each Radioactivity Well Surveying operation conducted during the term of the agreements. Paragraph 3.02 provides:

"Company agrees to pay WSI as royalty on each Radioactivity Well Surveying operation conducted by Company, which, if unlicensed, would infringe the Patent Rights of WSI during term of this agreement an amount equal to five percent (5%) of the gross charge (exclusive of mileage) made for the survey so conducted or a sum of ten dollars ($10.00) whichever is the greater."

m. The agreements between plaintiff and Goes, Rector and Mustang do not provide for a change in the

royalty base at the expiration of the Swift Patent on May 28, 1968.

n. The agreements between plaintiff and Goes, Rector and Mustang do not provide for a change in the royalty base at the expiration of the Mardock Patent on October 15, 1974.

o. The agreements between plaintiff and Goes, Rector and Mustang do not provide for the diminution of royalty at the expiration of the Swift Patent on May 28, 1968.

p. The agreements between plaintiff and Goes, Rector and Mustang do not provide for the diminution of royalty at the expiration of the Mardock Patent on October 15, 1974.

q. The agreements between plaintiff and Goes, Rector and Mustang do not provide that royalty is no longer payable under the Swift Patent at the expiration of the Swift Patent on May 28, 1968.

r. The agreements between plaintiff and Goes, Rector and Mustang do not provide that royalty is no longer payable under the Mardock Patent at the expiration of the Mardock Patent on October 15, 1974.

32. License agreements granted by plaintiff which cover the Swift Patent, the Peterson Patent and Patent No. 2,942,112 require the payment of a royalty of five percent (5%) of the gross charge (exclusive of mileage) or ten dollars ($10.00) whichever is greater.

33. License agreements granted by plaintiff which cover the Swift Patent, the Peterson Patent and Patent Nos. 2,810,076 and 2,942,112, require the payment of a royalty of five percent (5%) of the gross charge (ex-

clusive of mileage) or ten dollars ($10.00) whichever is greater.

a. Effective June 9, 1965, plaintiff and Eastern Wireline Surveys, Inc. (hereinafter "Eastern") executed an immunity agreement.

b. The agreement between plaintiff a[nd] Eastern covers only the Swift Patent, the Peterson Patent, the Mardock Patent, and the Hearn Patent No. 2,942,112 (hereinafter "The Hearn Patent").

c. On June 21, 1960, the Hearn Patent was issued to plaintiff.

d. The Hearn Patent will expire on June 21, 1977.

e. The Hearn Patent is an unimportant patent which covers a method for applying subsurface signals to the well logging cable.

f. Eastern cannot terminate its agreement with plaintiff until after the Swift Patent expires. Paragraph 4.02 provides:

> *"Company may terminate this Agreement as of the fifth anniversary date hereof* or as of any successive anniversary date thereafter by giving WSI written notice of cancellation at least sixty (60) days prior to the anniversary date on which cancellation is to take effect." (Emphasis Added)

g. Eastern is obligated to pay accrued royalties to plaintiff after the Swift Patent expires: Paragraph 4.04 provides:

> *"Termination of this Agreement shall not affect the obligations of Company to make any payments which shall have accrued up to the date of such termination,* and the fact that WSI shall not

have terminated this Agreement pursuant to Section 4.01 because of one or more defaults by Company shall not prejudice the right of WSI to effect termination for a continuing or subsequent default." (Emphasis Added)

h. Plaintiff has no right to terminate its Agreement with Eastern unless it breaches its agreement and fails to cure the breach within sixty (60) days after notice from plaintiff. Paragraph 4.01 provides:

"If Company shall neglect or fail to render reports and make payments as and when due hereunder or shall otherwise be in default of any obligation under this Agreement, WSI shall have the right to give written notice thereof to Company, and if within sixty (60) days from and after the date of such notice Company shall not have cured such default, then WSI may, at its option, cause this Agreement to terminate forthwith by giving written notice to that effect to Company."

i. The term of the agreement between plaintiff and Eastern unless terminated in accordance with Findings of Fact Nos. f. and h., is from the effective date of the agreement to the expiration of the Peterson Patent on January 10, 1978. Paragraph 4.03 provides:

"Unless otherwise terminated pursuant to the provisions hereof, this Agreement shall continue in full force and effect until the expiration date of the last patent to expire under which Company is granted immunity by this Agreement."

j. Eastern is obligated to pay plaintiff a royalty of five percent (5%) of the gross charge (exclusive of

mileage) or a sum of ten dollars ($10.00), whichever is greater, for each Radioactivity Well Surveying operation conducted during the term of the agreement. Paragraph 3.02 provides:

> "Company agrees to pay WSI as royalty on each Radioactivity Well Surveying operation conducted by Company, which, if unlicensed, would infringe the Patent Rights of WSI during term of this agreement an amount equal to five percent (5%) of the gross charge (exclusive of mileage) made for the survey so conducted or a sum of ten dollars ($10.00) whichever is the greater."

k. The agreement between plaintiff and Eastern does not provide for a change in the royalty base at the expiration of the Swift Patent on May 28, 1968.

l. The agreement between plaintiff and Eastern does not provide for a change in the royalty base at the expiration of the Mardock Patent on October 15, 1974.

m. The agreement between plaintiff and Eastern does not provide for a change in the royalty base at the expiration of the Hearn Patent on June 21, 1977.

n. The agreement between plaintiff and Eastern does not provide for the diminution of royalty at the expiration of the Swift Patent on May 28, 1968.

o. The agreement between plaintiff and Eastern does not provide for the diminution of royalty at the expiration of the Mardock Patent on October 15, 1974.

p. The agreement between plaintiff and Eastern does not provide for the diminution of royalty at the expiration of the Hearn Patent on June 21, 1977.

q. The agreement between plaintiff and Eastern does not provide that royalty is no longer payable under the Swift Patent at the expiration of the Swift Patent on May 28, 1968.

r. The agreement between plaintiff and Eastern does not provide that royalty is no longer payable under the Mardock Patent at the expiration of the Mardock Patent on October 15, 1974.

s. The agreement between plaintiff and Eastern does not provide that royalty is no longer payable under the Hearn Patent at the expiration of the Hearn Patent on June 21, 1977.

34. License agreements granted by plaintiff which cover the Swift Patent, the Peterson Patent and Patent Nos. 2,933,609 and 2,945,129, require the payment of a royalty of five percent (5%) of the gross charge (exclusive of mileage) or ten dollars ($10.00) whichever is greater.

35. License agreements granted by plaintiff which cover the Swift Patent, the Peterson Patent and Patent Nos. 2,810,076, 2,933,609 and 2,942,112, require the payment of a royalty of five percent (5%) of the gross charge (exclusive of mileage) or ten dollars ($10.00) whichever is greater.

a. Effective January 1, 1964, plaintiff and Go Electronics Surveys, Inc. (hereinafter "Go") executed an immunity agreement.

b. The agreement between plaintiff and Go covers the Swift Patent, the Peterson Patent, the Mardock Patent, the Hearn Patent and the Norelius Patent No. 2,933,609 (hereinafter "The Norelius Patent").

c. On April 19, 1960, the Norelius Patent was issued to plaintiff.

d. The Norelius Patent will expire on April 19, 1978.

e. The Norelius Patent is an unimportant patent which covers a method of multi-space neutron logging.

f. Go cannot terminate its agreement with plaintiff until after the Swift Patent expires. Paragraph 4.02 provides:

> *"Company may terminate this Agreement as of the fifth anniversary date hereof* or as of any successive anniversary date thereafter by giving WSI written notice of cancellation at least sixty (60) days prior to the anniversary date on which cancellation is to take effect." (Emphasis Added)

g. Go is obligated to pay accrued royalties to plaintiff after the Swift Patent expires. Paragraph 4.04 provides:

> *"Termination of this agreement shall not affect the obligations of Company to make any payments which shall have accrued up to the date of such termination,* and the fact that WSI shall not have terminated this Agreement pursuant to Section 4.01 because of one or more defaults by Company shall not prejudice the right of WSI to effect termination for a continuing or subsequent default." (Emphasis Added)

h. Plaintiff has no right to terminate its Agreement with Go unless it breaches its agreement and

fails to cure the breach within sixty (60) days after notice from plaintiff. Paragraph 4.01 provides:

> "If Company shall neglect or fail to render reports and make payments as and when due hereunder or shall otherwise be in default of any obligation under this Agreement, WSI shall have the right to give written notice thereof to Company, and if within sixty (60) days from and after the date of such notice Company shall not have cured such default, then WSI may, at its option, cause this Agreement to terminate forthwith by giving written notice to that effect to Company."

i. The term of the agreement between plaintiff and Go unless terminated in accordance with Findings of Fact Nos. f. and h., is from the effective date of the agreement to the expiration of the Peterson Patent on January 10, 1978. Paragraph 4.03 provides:

> "Unless otherwise terminated pursuant to the provisions hereof, this Agreement shall continue in full force and effect until the expiration date of the last patent to expire under which Company is granted immunity by this Agreement."

j. Go is obligated to pay plaintiff a royalty of five percent (5%) of the gross charge (exclusive of mileage) or a sum of ten dollars ($10.00) whichever is greater, for each Radioactivity Well Surveying operation conducted during the term of the agreement. Paragraph 3.02 provides:

> "Company agrees to pay WSI as royalty on each Radioactivity Well Surveying operation conducted by Company, which, if unlicensed, would infringe the Patent Rights of WSI during term of

this agreement an amount equal to five percent (5%) of the gross charge (exclusive of mileage) made for the survey so conducted or a sum of ten dollars ($10.00) whichever is greater.

k. The agreement between plaintiff and Go does not provide for a change in the royalty base at the expiration of the Swift Patent on May 28, 1968.

l. The agreement between plaintiff and Go does not provide for a change in the royalty base at the expiration of the Mardock Patent on October 15, 1974.

m. The agreement between plaintiff and Go does not provide for a change in the royalty base at the expiration of the Hearn Patent on June 21, 1977.

n. The agreement between plaintiff and Go does not provide for a change in the royalty base at the expiration of the Norelius Patent on April 19, 1977.

o. The agreement between plaintiff and Go does not provide for the diminution of royalty at the expiration of the Swift Patent on May 28, 1968.

p. The agreement between plaintiff and Go does not provide for the diminution of royalty at the expiration of the Mardock Patent on October 15, 1974.

q. The agreement between plaintiff and Go does not provide for the diminution of royalty at the expiration of the Hearn Patent on June 21, 1977,

r. The agreement between plaintiff and Go does not provide for the diminution of royalty at the expiration of the Norelius Patent on April 19, 1977.

s. The agreement between plaintiff and Go does not provide that royalty is no longer payable under the

Swift Patent at the expiration of the Swift Patent on May 28, 1968.

t. The agreement between plaintiff and Go does not provide that royalty is no longer payable under the Mardock Patent at the expiration of the Mardock Patent on October 15, 1974.

u. The agreement between plaintiff and Go does not provide that royalty is no longer payable under the Hearn Patent at the expiration of the Hearn Patent on June 21, 1977.

v. The agreement between plaintiff and Go does not provide that royalty is no longer payable under the Norelius Patent at the expiration of the Norelius Patent on April 19, 1977.

36. The Swift Patent issued on a United States Application filed in the United States Patent Office before January 1, 1961.

37. The Peterson Patent issued on a United States Application filed in the United States Patent Office before January 1, 1961.

38. License agreements granted by plaintiff which cover all United States Patents owned by plaintiff issued on applications filed in the United States Patent Office on or prior to January 1, 1961, including the Swift Patent and the Peterson Patent, require the payment of a royalty of five percent (5%) of the gross charge (exclusive of mileage) or ten dollars ($10.00) whichever is greater.

39. Plaintiff has offered to grant license agreements which cover all United States Patents owned by plaintiff issued on applications filed in the United

States Patent office on or prior to January 1, 1961, including the Swift Patent and the Peterson Patent which require the payment of a royalty of five percent (5%) of the gross charge (exclusive of mileage) or ten dollars ($10.00) whichever is greater.

40. No license agreement granted by plaintiff which covers only the Swift Patent requires the payment of a royalty less than five percent (5%) of the gross charge (exclusive of mileage) or ten dollars ($10.00), whichever is greater.

CONCLUSIONS OF LAW

1. A patentee will be denied relief where he is using his patent to subvert public policy. Morton Salt Co. v. G. S. Suppiger Co. (U.S. 1942), 314 U.S. 488, 492 and 494, 52 USPQ 30, 32 and 33.

2. Plaintiff by its licensing practices is using the Swift Patent to subvert public policy.

3. A patentee who recaptures or attempts to recapture any part of an expired patent is guilty of misuse. Scott Paper Co. v. Marcalus Co. (U.S. 1945), 326 U.S. 249, 256 and 257, 67 USPQ 193, 196 and 197; Burlotte v. Thys Co. (U.S. 1964), 143 USPQ 264, 266.

4. Plaintiff is guilty of misuse because, by its licensing practices, it has attempted to recapture the Swift Patent after its expiration.

5. A package license agreement which provides that that agreement shall continue in full force and effect until the expiration date of the last patent to expire under which the license is granted, constitutes patent misuse because it extends the payment of royalties under

patents which will expire to the expiration date of patents which will expire later. Baker-Cammack Hosiery Mills v. Davis Co. (C.A. 4, 1950), 181 F.2d 550, 569 and 573, 85 USPQ 94, 110 and 113; American Securit Co. v. Shatterproof Glass Corp. (C.A. 3, 1959), 268 F.2d 769, 777, 122 USPQ 167, 173-174; Technograph Printed Circuits Ltd. v. Bendix Aviation Corp. (D.C. Md. 1963), 218 F.Supp. 1, 48, 49, 137 USPQ 725, 762, 763.

6. The agreements between plaintiff and Jetco, Star, French, Luling, Maroney, Petroleum, Shelwell and Titan which provide that said agreements shall continue in full force and effect until the expiration date of the last patent to expire under which Company is granted immunity by said agreements, constitute misuse of the Swift Patent because they extend the payment of royalties under the Swift Patent to expiration date of the Peterson Patent.

7. A license agreement when it contains no diminution of license fee at the expiration of the most important patent and contains no termination clause at the will of the licensee constitutes in effect an effort to continue to collect royalties on an expired patent. Rocform Corp. v. Acitelli-Standard Concrete Wall Inc. (C.A. 6, 1966), 367 F.2d 678, 680 and 681, 151 USPQ 305, 307, 308.

8. An agreement which accords the licensee no right to terminate until after the expiration date of the most important patent is tantamount (at least as to the period between the expiration date of the most important patent and the date the licensee has the right to terminate) to an agreement which contains no termination clause at the will of the licensee.

9. The license agreements between plaintiff and Jetco, Star, French, Luling, Maroney, Petroleum, Shelwell and Titan constitute in effect an effort to continue to collect royalties on the Swift Patent after its expiration between said agreements contain no diminution of license fee at the expiration of the important Swift Patent and contain no termination clause at the will of the licensee.

10. License agreements, which require the non-differential royalty of five percent of the gross charge (exclusive of mileage) or the sum of ten dollars ($10.00) whichever is greater, for the Swift Patent only, for the Swift Patent plus one patent, for the Swift Patent plus two patents, for the Swift Patent plus three patents, for the Swift Patent plus four patents, for the Swift Patent plus all patents owned by plaintiff, are not voluntary on the part of licensees and said licensees were not offered a real alternative by plaintiff's offer to grant a license under any individual patent or patents upon negotiated terms.

11. Licensees are not offered, by plaintiff, licenses under any or all of plaintiff's patents in the field of radioactivity well surveying at a reasonable royalty rate that depends upon the patent or patents selected by them as required by their operations where the licenses granted by plaintiff required the payment of the non-differential royalty of five percent of the gross charge (exclusive of mileage) or ten dollars ($10.00) whichever is greater, irrespective of whether the licenses cover the Swift Patent only, the Swift Patent plus one patent, the Swift Patent plus two patents, the Swift Patent plus three patents, the Swift Patent plus four patents or the Swift Patent plus all patents owned by plaintiff.

JUDGMENT

Now on this 26th day of June, 1967, defendant's Motion for Summary Judgment seeking an adjudication that Swift Patent No. 2,554,844 is unenforceable because of misuse, and plaintiffs' counter motion having been heretofore briefed and orally presented, and the Court, being fully advised, finds that there is no genuine issue of material fact on the issues raised by said motions and that the defendant is entitled to a summary judgment as a matter of law.

It is therefore ordered and decreed that:

1. Plaintiffs' Motion for Summary Judgment is denied.

2. Defendant's Motion for Summary Judgment is granted.

3. Swift Patent No. 2,554,844 is unenforceable because of misuse by plaintiffs in licensing practices.

4. Plaintiffs shall have and recover nothing by reason of their claim that defendant has infringed Swift Patent No. 2,554,844.

5. There is no just reason for delay in the entry hereof and entry is hereby expressly directed.

LIBRARY
REME COURT. U. S.

Office-Supreme Court, U.S.
FILED
SEP 3 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1968
No. 471

PERFO-LOG, INC.,

Petitioner,

vs.

WELL SURVEYS, INC., now DRESSER SYSTEMS, INC., and DRESSER INDUSTRIES, INC.,

Respondents.

APPENDIX B

to

Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.

R. WELTON WHANN,
315 West Ninth Street,
Los Angeles, Calif. 90015,

W. D. HART,
P.O. Box 177,
Pauls Valley, Okla. 73075,

WELTON B. WHANN,
315 West Ninth Street,
Los Angeles, Calif. 90015,

Attorneys for Petitioner.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

IN THE

Supreme Court of the United States

October Term, 1968
No. .....

PERFO-LOG, INC.,

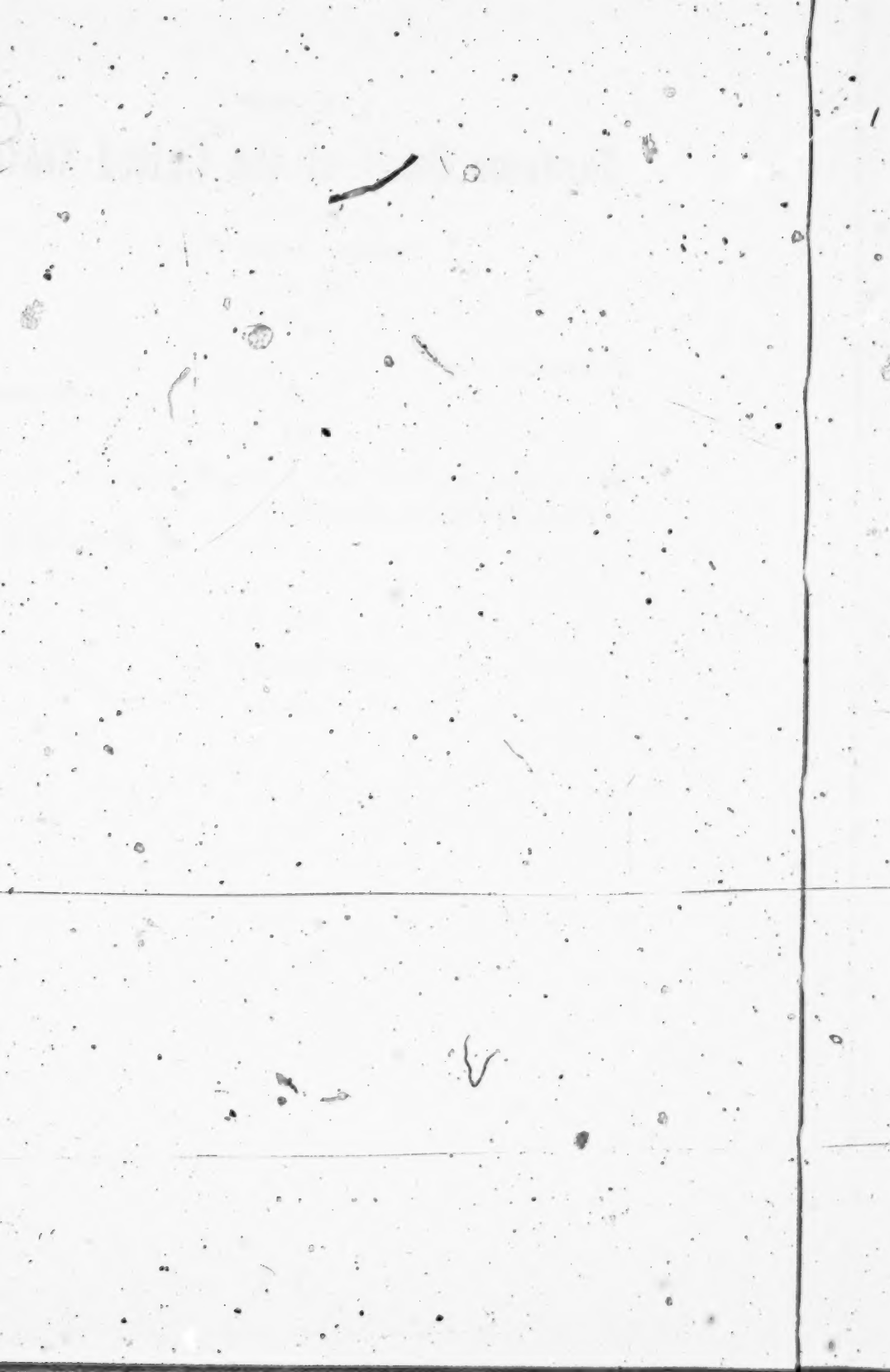
Petitioner,

vs.

WELL SURVEYS, INC., now DRESSER SYSTEMS, INC., and DRESSER INDUSTRIES, INC.,

Respondents.

APPENDIX B.



INDEX TO APPENDIX B

Tabulation of Twenty-Three of Respondents' License Agreements Which Cover the Swift Patent Plus One or More Additional Patents ..... App. B. pp. i, ii, iii

The twenty-three package license agreements summarized in the above tabulation 1-180

Letter from Dresser Industries, Inc., "To Licensees under Patents owned by Dresser Industries, Inc.", together with a proposed License Agreement covering the Peterson Patent No. 2,967,994 181-184

Excerpts from the Complaint of Joseph Bancroft & Sons Company v. M. Lowenstein & Sons, Inc. 185-195

Excerpts from Answer in Joseph Bancroft & Sons Company v. Lowenstein & Sons, Inc. 196-199

Tabulation of Twenty-Three of Respondents' License Agreements Which Cover the Swift Patent Plus One or More Additional Patents.

LICENSEE	Effective Date	Patents Covered*	Royalties Payable	The earliest date on which licensee has the right to terminate	The other dates on which licensee has the right to terminate**	The term, unless otherwise terminated
1. Subsurface Completion Services, Inc. (R. 954).	June 1, 1961 (R. 954).	Swift, Peterson and Hearn ¶ 1.06 (R. 956).	5% ¶ 3.02 (R. 957).	The fifth anniversary, i.e., June 1, 1966. ¶ 4.02 (R. 960).	Any successive anniversary, i.e., June 1, 1968. ¶ 4.02 (R. 960).	The expiration date of the last to expire of the licensed patents, i.e., Peterson which expires on January 10, 1978. ¶ 4.03 (R. 960).
2. Perf-O-Log, Inc. (R. 1105).	April 1, 1962 (R. 1105).	Swift and Mardock ¶ 1.06 (R. 1107).	5% ¶ 3.01 (R. 1109).	The fifth anniversary, i.e., April 1, 1967. ¶ 4.02 (R. 1111).	Any successive anniversary, i.e., April 1, 1969. ¶ 4.02 (R. 1111).	The expiration date of the last to expire of the licensed patents, i.e., Mardock which expires on October 15, 1974. ¶ 4.03 (R. 1111).
3. Vernon Stowers & James A. Wiley, a partnership, dba S & W Logging & Perforating Co. (R. 1124).	April 1, 1962 (R. 1124).	Swift and Mardock ¶ 1.06 (R. 1126).	5% ¶ 3.01 (R. 1127).	The fifth anniversary, i.e., April 1, 1967. ¶ 4.02 (R. 1130).	Any successive anniversary, i.e., April 1, 1969. ¶ 4.02 (R. 1130).	The expiration date of the last to expire of the licensed patents, i.e., Mardock which expires on October 15, 1974. ¶ 4.03 (R. 1130).
4. Perforators, Incorporated (R. 1199).	July 1, 1962 (R. 1199).	Swift and Mardock ¶ 1.06 (R. 1201).	5% ¶ 3.01 (R. 1203).	The fifth anniversary, i.e., July 1, 1967. ¶ 4.02 (R. 1205).	Any successive anniversary, i.e., July 1, 1968. ¶ 4.02 (R. 1205).	The expiration date of the last to expire of the licensed patents, i.e., Mardock which expires on October 15, 1974. ¶ 4.03 (R. 1205).
5. Cardinal Surveys Company (R. 1690).	Sept. 1, 1962 (R. 1690).	All Radioactivity method or apparatus patents issued on applications filed on or prior to Jan. 1. 1961 ¶ 1.06 (R. 1691-2).	5% ¶ 3.01 (R. 1694).	The fifth anniversary, i.e., Sept. 1, 1967. ¶ 4.02 (R. 1696).	Any successive anniversary, i.e., September 1, 1968. ¶ 4.02 (R. 1696).	The expiration date of the last to expire of the licensed patents. ¶ 4.03 (R. 1696).

*As used herein, Swift refers to Patent No. 2,554,844; Peterson refers to Patent No. 2,967,994; Hearn refers to Patent No. 2,942,112; Mardock refers to Patent No. 2,810,076; Norelius refers to Patent No. 2,933,609 and G. Swift refers to Patent No. 2,945,129.

**This portion of the Tabulation, which relates only to the licensees listed in Items 1 through 9 and Item 20, is based on the assumption that the licensees have not exercised their right to terminate prior to the expiration of the Swift patent.

LICENSEE	Effective Date	Patents Covered	Royalties Payable	The earliest date on which licensee has the right to terminate	The other dates on which licensee has the right to terminate	The term, unless otherwise terminated
6. Guns, Inc. (R. 1249).	Jan. 7, 1963 (R. 1249).	Swift, Norelius, G. Swift, and Peterson ¶ 1.06 (R. 1251).	5% ¶ 3.02 (R. 1253).	The fifth anniversary, i.e., Jan. 7, 1968. ¶ 4.02 (R. 1255).	Any successive anniversary i.e., January 7, 1969. ¶ 4.02 (R. 1255).	The expiration date of the last to expire of the licensed patents, i.e., Peterson which expires on Jan. 10, 1978. ¶ 4.03 (R. 1255).
7. Great Guns, Inc. (R. 1259). Dale Davis	Jan. 25, 1963 (R. 1259).	Swift, Hearn and Peterson ¶ 1.06 (R. 1260).	5% ¶ 3.02 (R. 1262).	The fifth anniversary, i.e., Jan. 25, 1968. ¶ 4.02 (R. 1265).	Any successive anniversary, i.e., January 25, 1969. ¶ 4.02 (R. 1265).	The expiration date of the last to expire of the licensed patents, i.e., Peterson which expires on Jan. 10, 1978. ¶ 4.03 (R. 1265).
8. Basin Surveys, Inc. (R. 1286).	March 1, 1963 (R. 1286).	Swift, Mardock and Peterson ¶ 1.06 (R. 1287).	5% ¶ 3.02 (R. 1289).	The fifth anniversary, i.e., March 1, 1968. ¶ 4.02 (R. 1292).	Any successive anniversary, i.e., March 1, 1969. ¶ 4.02 (R. 1292).	The expiration date of the last to expire of the licensed patents, i.e., Peterson which expires on Jan. 10, 1978. ¶ 4.03 (R. 1292).
9. Go Services, Inc. (R. 1305).	May 1, 1963 (R. 1305).	Swift and Mardock ¶ 1.06 (R. 1306).	5% ¶ 3.02 (R. 1308).	The fifth anniversary, i.e., May 1, 1968. ¶ 4.02 (R. 1310).	Any successive anniversary, i.e., May 1, 1969. ¶ 4.02 (R. 1310).	The expiration date of the last to expire of the licensed patents, i.e., Mardock which expires on October 15, 1974. ¶ 4.03 (R. 1310).
10. J.H. Barnes & H. H. Hartman, a partnership dba Goes Perforating & Logging (R. 1323).	July 1, 1963 (R. 1323).	Swift, Mardock and Peterson ¶ 1.06 (R. 1324).	5% ¶ 3.02 (R. 1326).	The fifth anniversary, i.e., July 1, 1968. ¶ 4.02 (R. 1329).		The expiration date of the last to expire of the licensed patents, i.e., Peterson which expires on Jan. 10, 1978. ¶ 4.03 (R. 1329).
11. Jetco, Inc. (R. 803).	Dec. 1, 1963 (R. 803).	Swift and Peterson ¶ 1.06 (R. 804).	5% ¶ 3.02 (R. 806).	The fifth anniversary, i.e., Dec. 1, 1968. ¶ 4.02 (R. 809).		The expiration date of the last to expire of the licensed patents, i.e., Peterson which expires on Jan. 10, 1978. ¶ 4.03 (R. 809).
12. Star Jet Oil Well Service, Inc. (R. 812). Pat Patton	Jan. 1, 1964 (R. 812).	Swift and Peterson ¶ 1.06 (R. 813).	5% ¶ 3.02 (R. 815).	The fifth anniversary, i.e., Jan. 1, 1969. ¶ 4.02 (R. 817).		The expiration date of the last to expire of the licensed patents, i.e., Peterson which expires on Jan. 10, 1978. ¶ 4.03 (R. 817).
13. Go Electronic Surveys, Inc. (R. 1333).	Jan. 1, 1964 (R. 1333).	Swift, Norelius, Peterson, Mardock and Hearn ¶ 1.06 (R. 1334).	5% ¶ 3.02 (R. 1336).	The fifth anniversary, i.e., Jan. 1, 1969. ¶ 4.02 (R. 1338).		The expiration date of the last to expire of the licensed patents, i.e., Peterson which expires on Jan. 10, 1978. ¶ 4.03 (R. 1338).
14. French Wells, Surveys (R. 820).	Feb. 1, 1964 (R. 820).	Swift and Peterson ¶ 1.06 (R. 822).	5% ¶ 3.02 (R. 823).	The fifth anniversary, i.e., Feb. 1. 1969. ¶ 4.02 (R. 826).		The expiration date of the last to expire of the licensed patents, i.e., Peterson which expires on Jan. 10, 1978. ¶ 4.03 (R. 826).

LICENSEE	Effective Date	Patents Covered	Royalties Payable	The earliest date on which licensee has the right to terminate	The other dates on which licensee has the right to terminate	The term, unless otherwise terminated
15. Luling Perforators, Incorporated (R. 830).	Feb. 24, 1964 (R. 830).	Swift and Peterson ¶ 1.06 (R. 831).	5% ¶ 3.02 (R. 833).	The fifth anniversary, i.e., Feb. 24, 1969. ¶ 4.02 (R. 836).		The expiration date of the last to expire of the licensed patents, i.e., Peterson which expires on Jan. 10, 1978. ¶ 4.03 (R. 836).
16. Maroney Electrical Well Service, Inc. (R. 839).	July 1, 1964 ¶ 1.06 (R. 839).	Swift and Peterson ¶ 1.06 (R. 840).	5% ¶ 3.02 (R. 842).	The fifth anniversary, i.e., July 1, 1969. ¶ 4.02 (R. 844).		The expiration date of the last to expire of the licensed patents, i.e., Peterson which expires on Jan. 10, 1978. ¶ 4.03 (R. 844).
17. Petroleum Surveys Corporation (R. 847).	Aug. 1, 1964 (R. 847).	Swift and Peterson ¶ 1.06 (R. 848).	5% ¶ 3.02 (R. 850).	The fifth anniversary, i.e., Aug. 1, 1969. ¶ 4.02 (R. 852).		The expiration date of the last to expire of the licensed patents, i.e., Peterson which expires on Jan. 10, 1978. ¶ 4.03 (R. 852).
18. Shelwell Services, Inc. (R. 855).	Oct. 1. 1964 (R. 855).	Swift and Peterson ¶ 1.06 (R. 856).	5% ¶ 3.02 (R. 858).	The fifth anniversary, i.e., Oct. 1, 1969. ¶ 4.02 (R. 860).		The expiration date of the last to expire of the licensed patents, i.e., Peterson which expires on Jan. 10, 1978. ¶ 4.03 (R. 860).
19. Rector Oil Well Services, Inc. (R. 1379).	Jan. 1, 1965 (R. 1379).	Swift, Peterson and Mardock ¶ 1.06 (R. 1380).	5% ¶ 3.02 (R. 1382).	The fifth anniversary, i.e., Jan. 1, 1970, ¶ 4.02 (R. 1384).		The expiration date of the last to expire of the licensed patents, i.e., Peterson which expires on Jan. 10, 1978. ¶ 4.03 (R. 1384).
20. Texas Perforating Company of Gainesville (R. 1392).	Jan. 1, 1965 (R. 1392).	Swift, Mardock and Peterson ¶ 1.06 (R. 1393).	5% ¶ 3.02 (R. 1395).	The first anniversary, i.e., Jan. 1, 1966. ¶ 4.02 (R. 1397).	Any successive anniversary, i.e., January 1, 1969. ¶ 4.02 (R. 1397).	The expiration date of the last to expire of the licensed patents, i.e., Peterson which expires on Jan. 10, 1978. ¶ 4.03 (R. 1397).
21. Titan Perforators Inc. (R. 863).	March 1, 1965 (R. 863).	Swift and Peterson ¶ 1.06 (R. 864).	5% ¶ 3.02 (R. 866).	The fifth anniversary, i.e., March 1, 1970. ¶ 4.02 (R. 868).		The expiration date of the last to expire of the licensed patents, i.e., Peterson which expires on Jan. 10, 1978. ¶ 4.03 (R. 868).
22. Mustang Electrical Services, Inc. (R. 1419).	April 15, 1965 (R. 1419).	Swift, Mardock and Peterson ¶ 1.06 (R. 1420).	5% ¶ 3.02 (R. 1422).	The fifth anniversary, i.e., April 15, 1970. ¶ 4.02 (R. 1424).		The expiration date of the last to expire of the licensed patents, i.e., Peterson which expires on Jan. 10, 1978. ¶ 4.03 (R. 1424).
23. Eastern Wireline Services, Inc. (R. 1428).	June 9, 1965 (R. 1428).	Swift, Mardock, Hearn and Peterson ¶ 1.06 (R. 1429).	5% ¶ 3.02 (R. 1431).	The fifth anniversary, i.e., June 9, 1970. ¶ 4.02 (R. 1433).		The expiration date of the last to expire of the licensed patents, i.e., Peterson which expires on Jan. 10, 1978. ¶ 4.03 (R. 1433).

IMMUNITY AGREEMENT

THIS AGREEMENT is effective the 1st day of June, 1961 by and between WELL SURVEYS, INC. of Tulsa, Oklahoma, a corporation of Delaware, hereinafter called "WSI", and SUBSURFACE COMPLETION SERVICES, INC., a corporation of Louisiana, hereinafter called "Company".

I.

Recitals and Definitions

1.01 WSI is possessed of certain patents and rights with respect to patents in the Field of Radioactivity Well Surveying, and Company desires the right to conduct Radioactivity Well Surveying operations for hire with immunity from liability for infringement of the "Patent Rights of WSI", as hereinafter defined.

1.02 The term "Radioactivity Well Surveying", as used herein, shall mean logging or surveying bore holes by the detection along a bore hole of neutral particles, charged particles or electromagnetic radiations coming either from the nucleus or from the outer particles of the atom or any other radioactive effects of radioactive radiations or combinations thereof emanating from the material within or traversed by the bore hole, whether these emanations represent a natural condition or result from irradiating the formation with neutral particles, charged particles or electromagnetic radiations or any combination of them or are the result of a treatment of the formation or the bore hole capable of giving rise to such emanations, and by the utilization of these received

[955]

radiations or particles to derive information concerning the nature or contents of the formation or the bore hole. The term "electromagnetic radiations" as used herein shall mean radiations having frequencies greater than that of ultraviolet light.

1.03 The term "Field of Radioactivity Well Surveying" as used herein shall mean all methods and apparatus used for Radioactivity Well Surveying.

1.04 The term "Radioactivity Survey" as used herein shall mean and include any logging and surveying operation in the Field of Radioactivity Well Surveying.

1.05 The term "Radioactivity Tracer Logging Service" shall mean either of the following: (a) a well logging service in which a radioactive tracer material is introduced into a single well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are subsequently conducted in said well to obtain information regarding the effect of said tracer material; or (b) a well logging service wherein a radioactive tracer material is introduced into a control well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are conducted in one or more adjacent wells for the purpose of obtaining information regarding transmission of said tracer material from said control well to said adjacent wells.

1.06 The term "Patent Rights of WSI" as used herein shall mean the following patents:

[956]

Swift #2,554,844
Hearn #2,942,112
Peterson #2,967,994

II.

Grants

2.01 WSI, warranting that it has the right to do so, hereby grants to Company, upon the terms and conditions hereinafter stated, a non-exclusive, non-transferable (except as hereinafter specified) immunity from any claim, suit or liability for infringement of Patent Rights of WSI arising from Radioactivity Well Surveying conducted by Company for others for hire during the term of this Agreement. Experimentation by Company in the Field of Radioactivity Well Surveying of a purely research or development nature without consideration of any kind flowing to Company from another shall be subject to immunity hereunder but shall not give rise to a claim for royalty.

2.02 Company shall have the right to extend to each of its customers with each Radioactivity Well Surveying operation conducted by Company the immunities granted under Section 2.01 under Patent Rights of WSI, such immunities being specifically restricted to the specific survey upon which royalty is paid under the provisions of Section 3.02.

[957]

2.03 Since the Radioactivity Well Surveying described in Section 2.01 requires the use of instruments, the immunities therein granted shall include the right in Company to make instruments for its own use and may be extended by Company to instrument manufacturers, provided Company shall advise WSI by notice in writing of any such extension, including the name and address of each instrument manufacturer to which extension has been made, and provided any such extension shall be specifically restricted to such instru-

ments made for and actually used by Company pursuant to the terms and conditions of this Agreement and shall cease to exist if this Agreement is terminated or if the instrument is transferred to a stranger of this Agreement except in the event such transferee has a license or immunity under Patent Rights of WSI to use such instrument, in which event the instrument shall be considered as having been made for such transferee.

III.

Payments

3.01 Company agrees to pay WSI cash consideration in the sum of not applicable upon execution and delivery of this Agreement as liquidated damages for past infringement of the WSI patent rights.

3.02 Company agrees to pay WSI as royalty on each Radioactivity Well Surveying operation conducted by Company, which, if unlicensed,

[958]

would infringe the Patent Rights of WSI during term of this agreement an amount equal to five percent (5%) of the gross charge (exclusive of mileage) made for the survey so conducted or a sum of ten dollars ($10.00), whichever is the greater.

3.03 In the event that a service involving Radioacitvity Well Surveying is one of a combination of several different services conducted by Company for the same customer on the same setup, at the same well and for a single price which is different from the total of the individual charges customarily made by Company for such services if performed separately, the "gross charge" for determining the royalty payable on such service involving Radioactivity Well Surveying shall be that proportion of the single price charged for said

combined service which the individual charge customarily made by Company for the particular service involving Radioactivity Well Surveying is of the total of the individual charges made by Company for each of such services if performed separately. For the purposes of this Section 3.03, a Radioactivity Tracer Logging Service shall be construed as "on the same setup" and "at the same well" even though successive setups or a plurality of wells are actually employed in rendering such a service.

3.04 On or before the 20th day of each month, Company shall furnish WSI with a report in writing setting forth the following information pertaining to each Radioactivity Well Survey performed by Company during the preceding calendar month:

[959]

(a) Customer;

(b) Invoice Number;

(c) Date of Invoice;

(d) Amount on which royalty is payable; and a summary including:

(e) Total, for all well surveys, of amounts specified in Item (d) above;

(f) Total royalty payable (Item (e) multiplied by royalty rate).

Each such statement shall be accompanied with payment for the full amount of the total royalty payable for the month in question.

3.05 Company shall fix charges for surveying operations conducted hereunder in its sole discretion but agrees that royalty payable hereunder shall not be less than (a) the amount which would be payable provided such charges were commensurate with the cost and

value of said operations, or (b) the amount which would be payable upon its published charges for such services, whichever is greater.

3.06 Company shall keep records adequate to verify the reports and payments made pursuant to Section 3.04, and WSI shall have access during regular business hours to Company's records to the extent and only to the extent necessary to verify said reports and payments.

[960]

IV.

Termination

4.01 If Company shall neglect or fail to render reports and make payments as and when due hereunder or shall otherwise be in default of any obligation under this Agreement, WSI shall have the right to give written notice thereof to Company, and if within sixty (60) days from and after the date of such notice Company shall not have cured such default, then WSI may, at its option, cause this Agreement to terminate forthwith by giving written notice to that effect to Company.

4.02 Company may terminate this Agreement as of the fifth anniversary date hereof or as of any successive anniversary date thereafter by giving WSI written notice of cancellation at least sixty (60) days prior to the anniversary date on which cancellation is to take effect.

4.03 Unless otherwise terminated pursuant to the provisions hereof, this Agreement shall continue in full force and effect until the expiration date of the last patent to expire under which Company is granted immunity by this Agreement.

4.04 Termination of this Agreement shall not affect the obligations of Company to make any payments which shall have accrued up to the date of such termination, and the fact that WSI shall not have terminated this Agreement pursuant to Section 4.01 because of one or more defaults by Company shall not prejudice the right of WSI to effect termination for a continuing or subsequent default.

[961]

V.

Miscellaneous

5.01 Company shall not be estopped to contest the validity of any patent included in Patent Rights of WSI.

5.02 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, and Company may assign the rights and privileges herein granted to the successors in ownership of substantially all ~~of~~ its Radioactivity Well Surveying business, provided any such successors shall subscribe to the terms and conditions herein, but this Agreement shall not be otherwise assignable by Company without the written consent of WSI.

5.03 The address of the parties hereto, for the purposes of notices, payments and other communication provided for herein, shall be as follows:

WELL SURVEYS, INC.
P. O. Box ~~1799~~ 589
Houston 1, Texas

Subsurface Completion Services, Inc.
907 Pere Marquette Building
New Orleans, Louisiana

[962]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their proper officers duly authorized and their corporate seals to be affixed as of the date first named herein.

WELL SURVEYS, INC.
By JAY G. BEAVER
Vice President

ATTEST:
/s/
Secretary

SUBSURFACE COMPLETION SERVICES, INC.

By /s/
President

ATTEST:
/s/
Controller

[1105]

IMMUNITY AGREEMENT

THIS AGREEMENT is effective the 1st day of April, 1962, by and between WELL SURVEYS, INC., of Tulsa, Oklahoma, a corporation of Delaware, hereinafter called "WSI", and Perf-O-Log, Inc., a corporation of Texas, hereinafter called "Company".

I.

Recitals and Definitions

1.01 WSI is possessed of certain patents and rights with respect to patents in the Field of Radioactivity Well Surveying, and Company desires the right to conduct Radioactivity Well Surveying operations for hire

with immunity from liability for infringement of the "Patent Rights of WSI", as hereinafter defined.

1.02 The term "Radioactivity Well Surveying" as used herein shall mean logging or surveying bore holes by the detection along a bore hole of neutral particles, charged particles or electromagnetic radiations coming either from the nucleus or from the outer particles of the atom or any other radioactive effects or radioactive radiations or combinations thereof emanating from the material within or traversed by the bore hole, whether these emanations represent a natural condition or result from

[1106]

irradiating the formation with neutral particles, charged particles or electromagnetic radiations or any combination of them or are the result of a treatment of the formation or the bore hole capable of giving rise to such emanations, and by the utilization of these received radiations or particles to derive information concerning the nature or contents of the formation or the bore hole. The term "electromagnetic radiations" as used herein shall mean radiations having frequencies greater than that of ultraviolet light.

1.03 The term "Field of Radioactivity Well Surveying" as used herein shall mean all methods and apparatus used for Radioactivity Well Surveying.

1.04 The term "Radioactivity Survey" as used herein shall mean and include any logging and surveying operation in the Field of Radioactivity Well Surveying.

1.05 The term "Radioactivity Tracer Logging Service" shall mean either of the following: (a) a well

logging service in which a radioactive tracer material is introduced into a single well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are subsequently conducted in said well to obtain information regarding the effect of said tracer material; or (b) a well logging service wherein a radioactive tracer material is introduced into a control well (wherein a Radioactivity Survey

[1107]

may or may not have been previously conducted) and in which one or more Radioactivity Surveys are conducted in one or more adjacent wells for the purpose of obtaining information regarding transmission of said tracer material from said control well to said adjacent wells.

1.06 The term "Patent Rights of WSI" as used herein shall mean Swift Patent #2,554,844 and Mardock Patent #2,810,076 which are owned by WSI.

II.

Grants

2.01 WSI, warranting that it has the right to do so, hereby grants to Company, upon the terms and conditions hereinafter stated, a non-exclusive, a non-transferable (except as hereinafter specified) immunity from any claim, suit or liability for infringement of Patent Rights of WSI arising from Radioactivity Well Surveying conducted by Company for others for hire during the term of this Agreement. Experimentation by Company in the Field of Radioactivity Well Surveying of a purely research or development nature without consideration of any kind flowing to Company from another

shall be subject to immunity hereunder but shall not give rise to a claim for royalty.

2.02 Company shall have the right to extend to each of its customers with each Radioactivity Well Surveying operation conducted by Company the immunities granted under Section 2.01

[1108]

under Patent Rights of WSI, such immunities being specifically restricted to the specific survey upon which royalty is paid under the provisions of Section 3.01.

2.03 Since the Radioactivity Well Surveying described in Section 2.01 requires the use of instruments, the immunities therein granted shall include the right in Company to make instruments for its own use and may be extended by Company to instrument manufacturers, provided Company shall advise WSI by notice in writing of any such extension, including the name and address of each instrument manufacturer to which extension has been made, and provided any such extension shall be specifically restricted to such instruments made for and actually used by Company pursuant to the terms and conditions of this Agreement and shall cease to exist if this Agreement is terminated or if the instrument is transferred to a stranger of this Agreement except in the event such transferee has a license or immunity under Patent Rights of WSI to use such instrument, in which event the instrument shall be considered as having been made for such transferee.

III.

Payments

3.01 Company agrees to pay WSI as royalty on each Radioactivity Well Surveying operation conducted

by Company, which, if unlicensed, would infringe of the Swift Patent #2,554,844

[1109]

or Mardock Patent #2,810,076 during the term of this Agreement an amount equal to five percent (5%) of the gross charges (exclusive of mileage) made for the survey so conducted, or a sum of ten dollars ($10.00), whichever is the greater.

3.02 In the event that a service involving Radioactivity Well Surveying is one of a combination of several different services conducted by Company for the same customer on the same setup, at the same well and for a single price which is different from the total of the individual charges customarily made by Company for such services if performed separately, the "gross charge" for determining the royalty payable on such service involving Radioactivity Well Surveying shall be that proportion of the single price charged for said combined service which the individual charge customarily made by Company for the particular service involving Radioactivity Well Surveying is of the total of the individual charges made by Company for each of such services if performed separately. For the purposes of this Section 3.02, a Radioactivity Tracer Logging Service shall be construed as "on the same setup" and "at the same well" even though successive setups or a plurality of wells are actually employed in rendering such a service.

3.03 On or before the 20th day of each month, Company shall furnish WSI with a report in writing setting forth the following information pertaining to each Radioactivity Well

[1110]

Survey performed by Company during the preceding calendar month:

(a) Customer;

(b) Invoice Number;

(c) Date of Invoice;

(d) Amount on which royalty is payable;

and a summary including:

(e) Total, for all well surveys, of amounts specified in Item (d) above;

(f) Total royalty payable (Item (e) multiplied by royalty rate).

Each such statement shall be accompanied with payment for the full amount of the total royalty payable for the quarter in question.

3.04 Company shall fix charges for surveying operations conducted hereunder in its sole discretion but agrees that royalty be payable provided such charges were commensurate with the cost and value of said operations, or (b) the amount which would be payable upon its published charges for such services, whichever is greater.

3.05 Company shall keep records adequate to verify the reports and payments made pursuant to Section 3.03, and WSI shall have access during regular business hours to Company's records to the extent and only to the extent necessary to verify said reports and payments.

[1111]

IV.

Termination

4.01 If Company shall neglect or fail to render reports and make payments as and when due here-

under or shall otherwise be in default of any obligation under this Agreement, WSI shall have the right to give written notice thereof to Company, and if within sixty (60) days from and after the date of such notice Company shall not have cured such default, then WSI may, at its option, cause this Agreement to terminate forthwith by giving written notice to that effect to Company.

4.02 Company may terminate this Agreement as of the fifth anniversary date hereof or as of any successive anniversary date thereafter by giving WSI written notice of cancellation at least sixty (60) days prior to the anniversary date on which cancellation is to take effect.

4.03 Unless otherwise terminated pursuant to the provisions hereof, this Agreement shall continue in full force and effect until the expiration date of the last patent to expire under which Company is granted immunity by this Agreement.

4.04 Termination of this Agreement shall not affect the obligations of Company to make any payments which shall have accrued up to the date of such termination, and the fact that WSI shall not have terminated this Agreement pursuant to Section 4.01 because of one or more defaults by Company shall

[1112]

not prejudice the right of WSI to effect termination for a continuing or subsequent default.

V.

Miscellaneous

5.01 Company shall not be estopped to contest the validity of any patent included in Patent Rights of WSI.

5.02 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, and Company may assign the rights and privileges herein granted to the successors in ownership of substantially all of its Radioactivity Well Surveying business, provided any such successors shall subscribe to the terms and conditions herein, but this Agreement shall not be otherwise assignable by Company without the written consent of WSI.

5.03 The address of the parties hereto, for the purposes of notices, payments and other communication provided for herein, shall be as follows:

WELL SURVEYS, INC.
P. O. Box 1799
Houston 1, Texas

and

[1113]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their proper officers duly authorized and their corporate seals to be affixed as of the date first named herein.

WELL SURVEYS, INC.
By JAY G. BEAVER
Vice President

ATTEST:
/s/
Secretary

PERF-O-LOG, INC.
By J. E. HAYNES
President

ATTEST:
Edgar R. Blair
Secretary

[1124]

IMMUNITY AGREEMENT

THIS AGREEMENT is effective the 1st day of April 1962, by and between WELL SURVEYS, INC., of Tulsa, Oklahoma, a corporation of Delaware, hereinafter called "WSI", and Vernon Stowers & James A. Wiley, A Partnership, dba S&W Logging & Perforating Co., hereinafter called "Company".

—I.

Recitals and Definitions

1:01 WSI is possessed of certain patents and rights with respect to patents in the Field of Radioactivity Well Surveying, and Company desires the right to conduct Radioactivity Well Surveying operations for hire with immunity from liability for infringement of the "Patent Rights of WSI", as hereinafter defined.

1.02 The term "Radioactivity Well Surveying" as used herein shall mean logging or surveying bore holes by the detection along a bore hole of neutral particles, charged particles or electromagnetic radiations coming either from the nucleus or from the outer particles of the atom or any other radioactive effects or radioactive radiations or combinations thereof emanating from the material within or traversed by the bore hole, whether these emanations represent a natural condition or result from

[1125]

irradiating the formation with neutral particles, charged particles or electromagnetic radiations or any combination of them or are the result of a treatment of the formation or the bore hole capable of giving rise to such emanations, and by the utilization of these received radi-

ations or particles to derive information concerning the nature or contents of the formation or the bore hole. The term "electromagnetic radiations" as used herein shall mean radiations having frequencies greater than that of ultraviolet light.

1.03 The term "Field of Radioactivity Well Surveying" as used herein shall mean all methods and apparatus used for Radioactivity Well Surveying.

1.04 The term "Radioactivity Survey" as used herein shall mean and include any logging and surveying operation in the Field of Radioactivity Well Surveying.

1.05 The term "Radioactivity Tracer Logging Service", shall mean either of the following: (a) a well logging service in which a radioactive tracer material is introduced into a single well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are subsequently conducted in said well to obtain information regarding the effect of said tracer material; or (b) a well logging service wherein a radioactive tracer material is introduced into a control well (wherein a Radioactivity Survey

[1126]

may or may not have been previously conducted; and in which one or more Radioactivity Surveys are conducted in one or more adjacent wells for the purpose of obtaining information regarding transmission of said tracer material from said control well to said adjacent wells.

1.06 The term "Patent Rights of WSI" as used herein shall mean Swift Patent #2,554,844 and Mardock Patent #2,810,076 which are owned by WSI.

II.

Grants

2.01 WSI, warranting that it has the right to do so, hereby grants to Company, upon the terms and conditions hereinafter stated, a non-exclusive, non-transferable (except as hereinafter specified) immunity from any claim, suit or liability for infringement of Patent Rights of WSI arising from Radioactivity Well Surveying conducted by Company for others for hire during the term of this Agreement. Experimentation by Company in the Field of Radioactivity Well Surveying of a purely research or development nature without consideration of any kind flowing to Company from another shall be subject to immunity hereunder but shall not give rise to a claim for royalty.

2.02 Company shall have the right to extend to each of its customers with each Radioactivity Well Surveying operation conducted by Company the immunities granted under Section 2.01

[1127]

under Patent Rights of WSI, such immunities being specifically restricted to the specific survey upon which royalty is paid under the provisions of Section 3.01.

2.03 Since the Radioactivity Well Surveying described in Section 2.01 requires the use of instruments, the immunities therein granted shall include the right in Company to make instruments for its own use and may be extended by Company to instrument manufacturers, provided Company shall advise WSI by notice in writing of any such extension, including the name and address of each instrument manufacturer to which extension has been made, and provided any such extension

shall be specifically restricted to such instruments made for and actually used by Company pursuant to the terms and conditions of this Agreement and shall cease to exist if this Agreement is terminated or if the instrument is transferred to a stranger of this Agreement except in the event such transferee has a license or immunity under Patent Rights of WSI to use such instrument, in which event the instrument shall be considered as having been made for such transferee.

III.

Payments

3.01 Company agrees to pay WSI as royalty on each Radioactivity Well Surveying operation conducted by Company, which, if unlicensed, would infringe of the Swift Patent #2,554,844

[1128]

or Mardock Patent #2,810,076 during the term of this Agreement an amount equal to five percent (5%) of the gross charges (exclusive of mileage) made for the survey so conducted, or a sum of ten dollars ($10.00), whichever is the greater.

3.02 In the event that a service involving Radioactivity Well Surveying is one of a combination of several different services conducted by Company for the same customer on the same setup, at the same well and for a single price which is different from the total of the individual charges customarily made by Company for such services if performed separately, the "gross charge" for determining the royalty payable on such service involving Radioactivity Well Surveying shall be that proportion of the single price charged for said combined service which the individual charge

customarily made by Company for the particular service involving Radioactivity Well Surveying is of the total of the individual charges made by Company for each of such services if performed separately. For the purposes of this Section 3.02, a Radioactivity Tracer Logging Service shall be construed as "on the same setup" and "at the same well" even though successive setups or a plurality of wells are actually employed in rendering such a service.

3.03 On or before the 20th day of each month, Company shall furnish WSI with a report in writing setting forth the following information pertaining to each Radioactivity Well

[1129]

Survey performed by Company during the preceding calendar month:

(a) Customer;

(b) Invoice Number;

(c) Date of Invoice;

(d) Amount on which royalty is payable; and a summary including:

(e) Total, for all well surveys, of amounts specified in Item (d) above;

(f) Total royalty payable (Item (e) multiplied by royalty rate).

Each such statement shall be accompanied with payment for the full amount of the total royalty payable for the quarter in question.

3.04 Company shall fix charges for surveying operations conducted hereunder in its sole discretion but agrees that royalty be payable provided such charges were commensurate with the cost and value of said

operations, or (b) the amount which would be payable upon its published charges for such services, whichever is greater.

3.05 Company shall keep records adequate to verify the reports and payments made pursuant to Section 3.03, and WSI shall have access during regular business hours to Company's records to the extent and only to the extent necessary to verify said reports and payments.

[1130]

IV.

Termination

4.01 If Company shall neglect or fail to render reports and make payments as and when due hereunder or shall otherwise be in default of any obligation under this Agreement, WSI shall have the right to give written notice thereof to Company, and if within sixty (60) days from and after the date of such notice Company shall not have cured such default, then WSI may, at its option, cause this Agreement to terminate forthwith by giving written notice to that effect to Company.

4.02 Company may terminate this Agreement as of the fifth anniversary date hereof or as of any successive anniversary date thereafter by giving WSI written notice of cancellation at least sixty (60) days prior to the anniversary date on which cancellation is to take effect.

4.03 Unless otherwise terminated pursuant to the provisions hereof, this Agreement shall continue in full force and effect until the expiration date of the last pat-

ent to expire under which Company is granted immunity by this Agreement.

4.04 Termination of this Agreement shall not affect the obligations of Company to make any payments which shall have accrued up to the date of such termination, and the fact that WSI shall not have terminated this Agreement pursuant to Section 4.01 because of one or more defaults by Company shall

[1131]

not prejudice the right of WSI to effect termination for a continuing or subsequent default.

V.

Miscellaneous

5.01 Company shall not be estopped to contest the validity of any patent included in Patent Rights of WSI.

5.02 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, and Company may assign the rights and privileges herein granted to the successors in ownership of substantially all of its Radioactivity Well Surveying business, provided any such successors shall subscribe to the terms and conditions herein, but this Agreement shall not be otherwise assignable by Company without the written consent of WSI.

5.03 The address of the parties hereto, for the purposes of notices, payments and other communication provided for herein, shall be as follows:

WELL SURVEYS, INC.
P. O. Box 1799
Houston 1, Texas

and

[1132]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their proper officers duly authorized and their corporate seals to be affixed as of the date first named herein.

WELL SURVEYS, INC.
By Jay G. Beaver
Vice President

ATTEST:
/s/
Secretary

S&W LOGGING &
PERFORATING CO.
By James Wiley
Partner—James A. Wiley

ATTEST:
Vernon Stowers
Partner—Vernon Stowers

[1133]

ANNEX TO IMMUNITY AGREEMENT
dated
April 1, 1962
between
WELL SURVEYS, INC.
and
S&W LOGGING AND PERFORATING CO.

S&W Logging and Perforating Co. hereby pays Well Surveys, Inc. ..... ($136.00) dollars as liquidated damages for past infringement of

the "W.S.I. Patent Rights" as defined in paragraph 1.06 of the above identified Immunity Agreement.

Agreed: April 2, 1962
S&W LOGGING & PERFORATING CO.
By Vernon Stowers
Vernon Stowers—Partner
By James Wiley
James A. Wiley—Partner

WELL SURVEYS, INC.
Jay G. Beaver
Jay G. Beaver - Vice President

[1199]

IMMUNITY AGREEMENT

THIS AGREEMENT is effective the 1st day of July, 1962, by and between WELL SURVEYS, INC., of Tulsa, Oklahoma, a corporation of Delaware, hereinafter called "WSI" and Perforators, Incorporated, a corporation of Kansas, hereinafter called "Company".

I.

Recitals and Definitions

1.01 WSI is possessed of certain patents and rights with respect to patents in the Field of Radioactivity Well Surveying, and Company desires the right to conduct Radioactivity Well Surveying operations for hire with immunity from liability for infringement of the "Patent Rights of WSI", as hereinafter defined.

1.02 The term "Radioactivity Well Surveying" as used herein shall mean logging or surveying bore

holes by the detection along a bore hole of neutral particles, charged particles or electromagnetic radiations coming either from the nucleus or from the outer particles of the atom or any other radioactive effects or radioactive radiations or combinations thereof emanating from the material within or traversed by the bore hole, whether these emanations represent a natural condition or result from

[1200]

irradiating the formation with netural particles, charged particles or electromagnetic radiations or any combination of them or are the result of a treatment of the formation or the bore hole capable of giving rise to such emanations, and by the utilization of these received radiations or particles to derive information concerning the nature or contents of the formation or the bore hole. The term "electromagnetic radiations" as used herein shall mean radiations having frequencies greater than that of ultraviolet light.

1.03 The term "Field of Radioactivity Well Surveying" as used herein shall mean all methods and apparatus used for Radioactivity Well Surveying.

1.04 The term "Radioactivity Survey" as used herein shall mean and include any logging and surveying operation in the Field of Radioactivity Well Surveying.

1.05 The term "Radioactivity Tracer Logging Service" shall mean either of the following: (a) a well logging service in which a radioactive tracer material is introduced into a single well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are subsequently conducted in said well to obtain informa-

tion regarding the effect of said tracer material; or (b) a well logging service wherein a radioactive tracer material is introduced into a control well (wherein a Radioactivity Survey

[1201]

may or may not have been previously conducted) and in which one or more Radioactivity Surveys are conducted in one or more adjacent wells for the purpose of obtaining information regarding transmission of said tracer material from said control well to said adjacent wells.

1.06 The term "Patent Rights of WSI" as used herein shall mean Swift Patent #2,554,844 and Mardock Patent #2,810,076 which are owned by WSI.

II.

Grants

2.01 WSI, warranting that it has the right to do so, hereby grants to Company, upon the terms and conditions hereinafter stated, a non-exclusive, non-transferable (except as hereinafter specified) immunity from any claim, suit or liability for infringement of Patent Rights of WSI arising from Radioactivity Well Surveying conducted by Company for others for hire during the term of this Agreement. Experimentation by Company in the Field of Radioactivity Well Surveying of a purely research or development nature without consideration of any kind flowing to Company from another shall be subject to immunity hereunder but shall not give rise to a claim for royalty.

2.02 Company shall have the right to extend to each of its customers with each Radioactivity Well Sur-

veying operation conducted by Company the immunities granted under Section 2.01

[1202]

under Patent Rights of WSI, such immunities being specifically restricted to the specific survey upon which royalty is paid under the provisions of Section 3.01.

2.03 Since the Radioactivity Well Surveying described in Section 2.01 requires the use of instruments, the immunities therein granted shall include the right in Company to make instruments for its own use and may be extended by Company to instrument manufacturers, provided Company shall advise WSI by notice in writing of any such extension, including the name and address of each instrument manufacturer to which extension has been made, and provided any such extension shall be specifically restricted to such instruments made for and actually used by Company pursuant to the terms and conditions of this Agreement and shall cease to exist if this Agreement is terminated or if the instrument is tranferred to a stranger of this Agreement except in the event such transferee has a license or immunity under Patent Rights of WSI to use such instrument, in which event the instrument shall be considered as having been made for such transferee.

III.

Payments

3.01 Company agrees to pay WSI as royalty on each Radioactivity Well Surveying operation conducted by Company, which, if unlicensed, would infringe of the Swift Patent #2,554,844

[1203]

or Mardock Patent #2,810,076 during the term of this Agreement an amount equal to five percent (5%) of the gross charges (exclusive of mileage) made for the survey so conducted, or a sum of ten dollars ($10.00), whichever is the greater.

3.02 In the event that a service involving Radioactivity Will Surveying is one of a combination of several different services conducted by Company for the same customer on the same setup, at the same well and for a single price which is different from the total of the individual charges customarily made by Company for such services if performed separately, the "gross charge" for determining the royalty payable on such service involving Radioactivity Well Surveying shall be that proportion of the single price charged for said combined service which the individual charge customarily made by Company for the particular service involving Radioactivity Well Surveying is of the total of the individual charges made by Company for each of such services if performed separately. For the purposes of this Section 3.02, a Radioactivity Tracer Logging Service shall be construed as "on the same setup" and "at the same well" even though successive setups or a plurality of wells are actually employed in rendering such a service.

3.03 On or before the 20th day of each month, Company shall furnish WSI with a report in writing setting forth the following information pertaining to each Radioactivity Well

[1204]

Survey performed by Company during the preceding calendar month:

(a) Customer;

(b) Invoice Number;

(c) Date of Invoice;

(d) Amount on which royalty is payable;

and a summary including:

(e) Total, for all well surveys, of amounts specified in Item (d) above;

(f) Total royalty payable (Item (e) multiplied by royalty rate).

Each such statement shall be accompanied with payment for the full amount of the total royalty payable for the quarter in question.

3.04 Company shall fix charges for surveying operations conducted hereunder in its sole discretion but agrees that royalty be payable provided such charges were commensurate with the cost and value of said operations, or (b) the amount which would be payable upon its published charges for such services, whichever is greater.

3.05 Company shall keep records adequate to verify the reports and payments made pursuant to Section 3.03, and WSI shall have access during regular business hours to Company's records to the extent and only to the extent necessary to verify said reports and payments.

[1205]

IV.

Termination.

4.01 If Company shall neglect or fail to render reports and make payments as and when due hereunder or shall otherwise be in default of any obligation under this Agreement, WSI shall have the right to give

written notice thereof to Company, and if within sixty (60) days from and after the date of such notice Company shall not have cured such default, then WSI may, at its option, cause this Agreement to terminate forthwith by giving written notice to that effect to Company.

4.02 Company may terminate this Agreement as of the fifth anniversary date hereof or as of any successive anniversary date thereafter by giving WSI written notice of cancellation at least sixty (60) days prior to the anniversary date on which cancellation is to take effect.

4.03 Unless otherwise terminated pursuant to the provisions hereof, this Agreement shall continue in full force and effect until the expiration date of the last patent to expire under which Company is granted immunity by this Agreement.

4.04 Termination of this Agreement shall not affect the obligations of Company to make any payments which shall have accrued up to the date of such termination, and the fact that WSI shall not have terminated this Agreement pursuant to Section 4.01 because of one or more defaults by Company shall

[1206]

not prejudice the right of WSI to effect termination for a continuing or subsequent default.

V.

Miscellaneous

5.01 Company shall not be estopped to contest the validity of any patent included in Patent Rights of WSI.

5.02 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of

the parties hereto, and Company may assign the rights and privileges herein granted to the successors in ownership of substantially all of its Radioactivity Well Surveying business, provided any such successors shall subscribe to the terms and conditions herein, but this Agreement shall not be otherwise assignable by Company without the written consent of WSI.

5.03 The address of the parties hereto, for the purposes of notices, payments and other communication provided for herein, shall be as follows:

WELL SURVEYS, INC.
P. O. Box 1799
Houston 1, Texas

and

Perforators, Inc.
P. O. Box 811
Great Bend, Kansas

[1207]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their proper officers duly authorized and their corporate seals to be affixed as of the date first named herein.

WELL SURVEYS, INC.
By Jay G. Beaver
Vice President

ATTEST:
/s/
Assistant Secretary

PERFORATORS, INC.
By William A. Snyder
President

ATTEST:
/s/
Secretary

[1690]

IMMUNITY AGREEMENT

THIS AGREEMENT is effective the 1st day of September, 1962 by and between WELL SURVEYS, INC. of Tulsa, Oklahoma, a corporation of Delaware, hereinafter called "WSI", and CARDINAL SURVEYS COMPANY, a corporation of Texas, hereinafter called "Company".

I.

Recitals and Definitions

1.01 WSI is possessed of certain patents and rights with respect to patents in the Field of Radioactivity Well Surveying, and Company desires the right to conduct Radioactivity Well Surveying operations for hire with immunity from liability for infringement of the "Patent Rights of WSI", as hereinafter defined.

1.02 The term "Radioactivity Well Surveying", as used herein, shall mean logging or surveying bore holes by the detection along a bore hole of neutral particles, charged particles or electromagnetic radiations coming either from the nucleus or from the outer particles of the atom or any other radioactive effects of radioactive radiations or combinations thereof emanating from the material within or traversed by the bore hole, whether these emanations represent a natural condition or result from irradiating the formation with neutral particles, charged particles or electromagnetic radiations or any combination of them or are the result of a treatment of the formation or the bore hole capable of giving rise to such emanations, and by the utilization of these received

[1691]

radiations or particles to derive information concerning the nature or contents of the formation or the bore hole. The term "electromagnetic radiations" as used herein shall mean radiations having frequencies greater than that of ultraviolet light.

1.03 The term "Field of Radioactivity Well Surveying" as used herein shall mean all methods and apparatus used for Radioactivity Well Surveying.

1.04 The term "Radioactivity Survey" as used herein shall mean and include any logging and surveying operation in the Field of Radioactivity Well Surveying.

1.05 The term "Radioactivity Tracer Logging Service" shall mean either of the following: (a) a well logging service in which a radioactive tracer material is introduced into a single well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are subsequently conducted in said well to obtain information regarding the effect of said tracer material; or (b) a well logging service wherein a radioactive tracer material is introduced into a control well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are conducted in one or more adjacent wells for the purpose of obtaining information regarding transmission of said tracer material from said control well to said adjacent wells.

1.06 The term "Patent Rights of WSI" as used herein shall mean any and all United States patents owned by WSI to the

[1692]

extent that such patents claim inventions disclosed in applications filed in the United States Patent Office on or prior to January 1, 1961, and to the extent that such patents would be infringed by a method or apparatus in the Field of Radioactivity Well Surveying.

II.

Grants

2.01 WSI, warranting that it has the right to do so, hereby grants to Company, upon the terms and conditions hereinafter stated, a non-exclusive, non-transferable (except as hereinafter specified) immunity from any claim, suit or liability for infringement of Patent Rights of WSI arising from Radioactivity Well Surveying conducted by Company for others for hire during the term of this Agreement. Experimentation by Company in the Field of Radioactivity Well Surveying of a purely research or development nature without consideration of any kind flowing to Company from another shall be subject to immunity hereunder but shall not give rise to a claim for royalty.

2.02 Company shall have the right to extend to each of its customers with each Radioactivity Well Surveying operation conducted by Company the immunities granted under Section 2.01 under Patent Rights of WSI, such immunities being specifically restricted to the specific survey upon which royalty is paid under the provisions of Section 3.02.

[1693]

2.03 Since the Radioactivity Well Surveying described in Section 2.01 requires the use of instruments, the immunities therein granted shall include the right in Company to make instruments for its own use and

may be extended by Company to instrument manufacturers, provided Company shall advise WSI by notice in writing of any such extension, including the name and address of each instrument manufacturer to which extension has been made, and provided any such extension shall be specifically restricted to such instruments made for and actually used by Company pursuant to the terms and conditions of this Agreement and shall cease to exist if this Agreement is terminated or if the instrument is transferred to a stranger of this Agreement except in the event such transferee has a license or immunity under Patent Rights of WSI to use such instrument, in which event the instrument shall be considered as having been made for such transferee.

III.

Payments

3.01 Company agrees to pay WSI as royalty on each Radioactivity Survey conducted by Company during the

[1694]

term of this Agreement an amount equal to five per cent (5%) of gross charge (exclusive of mileage) made for the survey so conducted or a sum of ten dollars ($10.00), whichever is the greater.

3.02 In the event that a service involving Radioactivity Well Surveying is one of a combination of several different services conducted by Company for the same customer on the same setup, at the same well and for a single price which is different from the total of the individual charges customarily made by Company for such services if performed separately, the

"gross charge" for determining the royalty payable on such service involving Radioactivity Well Surveying shall be that proportion of the single price charged for said combined service which the individual charge customarily made by Company for the particular service involving Radioactivity Well Surveying is of the total of the individual charges made by Company for each of such services if performed separately.

3.03 For the purposes of Section 3.02, a Radioactivity Tracer Logging Service shall be construed as "on the same setup" and "at the same well" even though successive setups or a plurality of wells are actually employed in rendering such a service.

3.04 On or before the 20th day of each January, April, July and October, Company shall furnish WSI with a report in writing setting forth the following information pertaining to each Radioactivity Well Survey performed by Company during the

[1695]

preceding calendar quarter:

(a) Customer;

(b) Invoice Number;

(c) Date of Invoice;

(d) Amount on which royalty is payable;

and a summary including:

(e) Total, for all well surveys, of amounts specified in Item (d) above;

(f) Total royalty payable (Item (e) multiplied by royalty rate).

Each such statement shall be accompanied with payment for the full amount of the total royalty payable for the quarter in question.

3.05 Company shall fix charges for surveying operations conducted hereunder in its sole discretion but agrees that royalty payable hereunder shall not be less than (a) the amount which would be payable provided such charges were commensurate with the cost and value of said operations, or (b) the amount which would be payable upon its published charges for such services, whichever is greater.

3.06 Company shall keep records adequate to verify the reports and payments made pursuant to Section 3.04, and WSI shall have access during regular business hours to Company's records to the extent and only to the extent necessary to verify said reports and payments.

[1696]

IV.

Termination

4.01 If Company shall neglect or fail to render reports and make payments as and when due hereunder or shall otherwise be in default of any obligation under this Agreement, WSI shall have the right to give written notice thereof to Company, and if within sixty (60) days from and after the date of such notice Company shall not have cured such default, then WSI may, at its option, cause this Agreement to terminate forthwith by giving written notice to that effect to Company.

4.02 Company may terminate this Agreement as of the fifth anniversary date hereof or as of any successive anniversary date thereafter by giving WSI written notice of cancellation at least sixty (60) days prior to the anniversary date on which cancellation is to take effect.

4.03 Unless otherwise terminated pursuant to the provisions hereof, this Agreement shall continue in full force and effect until the expiration date of the last patent to expire under which Company is granted immunity by this Agreement.

4.04 Termination of this Agreement shall not affect the obligations of Company to make any payments which shall have accrued up to the date of such termination, and the fact that WSI shall not have terminated this Agreement pursuant to Section 4.01 because of one or more defaults by Company shall not prejudice the right of WSI to effect termination for a continuing or subsequent default.

[1697]

V.

Miscellaneous

5.01 Company shall not be estopped to contest the validity of any patent included in Patent Rights of WSI.

5.02 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, and Company may assign the rights and privileges herein granted to the successors in ownership of substantially all of its Radioactivity Well Surveying business, provided any such successors shall subscribe to the terms and conditions herein, but this Agreement shall not be otherwise assignable by Company without the written consent of WSI.

5.03 The address of the parties hereto, for the purposes of notices, payments and other communication provided for herein, shall be as follows:

WELL SURVEYS, INC.
P. O. Box 1799
Houston 1, Texas
CARDINAL SURVEYS COMPANY
P. O. Box 2049
Odessa, Texas

[1698]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their proper officers duly authorized and their corporate seals to be affixed as of the date first named herein.

WELL SURVEYS, INC.
By Jay G. Beaver
Vice President

ATTEST:
/s/
Secretary
(Seal)

CARDINAL SURVEYS COMPANY
By /s/
President

ATTEST:
/s/
Assistant Secretary

[1249]

IMMUNITY AGREEMENT

THIS AGREEMENT is effective the 7th day of January, 1963, by and between WELL SURVEYS, INC., of Tulsa, Oklahoma, a corporation of Delaware, hereinafter called "WSI", and GUNS, INC., a corporation of Texas, hereinafter called "Company".

I.

Recitals and Definitions

1.01 WSI is possessed of certain patents and rights with respect to patents in the Field of Radioactivity Well Surveying, and Company desires the right to conduct Radioactivity Well Surveying operations for hire with immunity from liability for infringement of the "Patent Rights of WSI", as hereinafter defined.

1.02 The term "Radioactivity Well Surveying" as used herein shall mean logging or surveying bore holes by the detection along a bore hole of neutral particles, charged particles or electromagnetic radiations coming either from the nucleus or from the outer particles of the atom or any other radioactive effects or radioactive radiations or combinations thereof emanating from the material within or traversed by the bore hole, whether these emanations represent a natural condition or result from

[1250]

irradiating the formation with neutral particles, charged particles or electromagnetic radiations or any combination of them or are the result of a treatment of the formation or the bore hole capable of giving rise to such emanations, and by the utilization of these received radiations or particles to derive information con-

cerning the nature or contents of the formation or the bore hole. The term "electromagnetic radiations" as used herein shall mean radiations having frequencies greater than that of ultraviolet light.

1.03 The term "Field of Radioactivity Well Surveying" as used herein shall mean all methods and apparatus used for Radioactivity Well Surveying.

1.04 The term "Radioactivity Survey" as used herein shall mean and include any logging and surveying operation in the Field of Radioactivity Well Surveying.

1.05 The term "Radioactivity Tracer Logging Service" shall mean either of the following: (a) a well logging service in which a radioactive tracer material is introduced into a single well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are subsequently conducted in said well to obtain information regarding the effect of said tracer material; or (b) a well logging service wherein a radioactive tracer material is introduced into a control well (wherein a Radioactivity Survey

[1251]

may or may not have been previously conducted) and in which one or more Radioactivity Surveys are conducted in one or more adjacent wells for the purpose of obtaining information regarding transmission of said tracer material from said control well to said adjacent wells.

1.06 The term "Patent Rights of WSI" as used herein shall mean Patents #2,554,844; #2,933,609; #2,945,129; and #2,967,994, which are owned by WSI.

II.

Grants

2.01 WSI, warranting that it has the right to do so, hereby grants to Company, upon the terms and conditions hereinafter stated, a non-exclusive, non-transferable (except as hereinafter specified) immunity from any claim, suit or liability for infringement of Patent Rights of WSI arising from Radioactivity Well Surveying conducted by Company for others for hire during the term of this Agreement. Experimentation by Company in the Field of Radioactivity Well Surveying of a purely research or development nature without consideration of any kind flowing to Company from another shall be subject to immunity hereunder but shall not give rise to a claim for royalty.

2.02 Company shall have the right to extend to each of its customers with each Radioactivity Well Surveying operation conducted by Company the immunities granted under Section 2.01

[1252]

under Patent Rights of WSI, such immunities being specifically restricted to the specific survey upon which royalty is paid under the provisions of Section 3.01.

2.03 Since the Radioactivity Well Surveying described in Section 2.01 requires the use of instruments, the immunities therein granted shall include the right in Company to make instruments for its own use and may be extended by Company to instrument manufacturers, provided Company shall advise WSI by notice in writing of any such extension, including the name and address of each instrument manufacturer to which extension has been made, and provided any such ex-

tension shall be specifically restricted to such instruments made for and actually used by Company pursuant to the terms and conditions of this Agreement and shall cease to exist if this Agreement is terminated or if the instrument is transferred to a stranger of this Agreement except in the event such transferee has a license or immunity under Patent Rights of WSI to use such instrument, in which event the instrument shall be considered as having been made for such transferee.

III.

Payments

3.01 Company agrees to pay WSI as royalty on each Radioactivity Well Surveying operation conducted by Company, which, if unlicensed, would infringe of Patents #2,554,844; #2,933,609; #2,945,129; and #2,967,994, during the term of this

[1253]

Agreement an amount equal to five percent (5%) of the gross charges (exclusive of mileage) made for the survey so conducted, or a sum of ten dollars ($10.00), whichever is the greater.

3.02 In the event that a service involving Radioactivity Well Surveying is one of a combination of several different services conducted by Company for the same customer on the same setup, at the same well and for a single price which is different from the total of the individual charges customarily made by Company for such services if performed separately, the "gross charge" for determining the royalty payable on such service involving Radioactivity Well Surveying shall be that proportion of the single price charged for said combined service which the individual charge

customarily made by Company for the particular service involving Radioactivity Well Surveying is of the total of the individual charges made by Company for each of such services if performed separately. For the purposes of this Section 3.02, a Radioactivity Tracer Logging Service shall be construed as "on the same setup" and "at the same well" even though successive setups or a plurality of wells are actually employed in rendering such a service.

3.03 On or before the 20th day of each month, Company shall furnish WSI with a report in writing setting forth the following information pertaining to each Radioactivity Well

[1254]

Survey performed by Company during the preceding calendar month:

(a) Customer;

(b) Invoice Number;

(c) Date of Invoice;

(d) Amount on which royalty is payable; and a summary including:

(e) Total, for all well surveys, of amounts specified in Item (d) above;

(f) Total royalty payable (Item (e) multiplied by royalty rate).

Each such statement shall be accompanied with payment for the full amount of the total royalty payable for the quarter in question.

3.04 Company shall fix charges for surveying operations conducted hereunder in its sole discretion but agrees that royalty be payable provided such charges were commensurate with the cost and value of said

operations, or (b) the amount which would be payable upon its published charges for such services, whichever is greater.

3.05 Company shall keep records adequate to verify the reports and payments made pursuant to Section 3.03, and WSI shall have access during regular business hours to Company's records to the extent and only to the extent necessary to verify said reports and payments.

[1255]

IV.

Termination

4.01 If Company shall neglect o. fail to render reports and make payments as and when due hereunder or shall otherwise be in default of any obligation under this Agreement, WSI shall have the right to give written notice thereof to Company, and if within sixty (60) days from and after the date of such notice Company shall not have cured such default, then WSI may, at its option, cause this Agreement to terminate forthwith by giving written notice to that effect to Company.

4.02 Company may terminate this Agreement as of the fifth anniversary date hereof or as of any successive anniversary date thereafter by giving WSI written notice of cancellation at least sixty (60) days prior to the anniversary date on which cancellation is to take effect.

4.03 Unless otherwise terminated pursuant to the provisions hereof, this Agreement shall continue in full force and effect until the expiration date of the last patent to expire under which Company is granted immunity by this Agreement.

4.04 Termination of this Agreement shall not affect the obligations of Company to make any payments which shall have accrued up to the date of such termination, and the fact that WSI shall not have terminated this Agreement pursuant to Section 4.01 because of one or more defaults by Company shall

[1256]

not prejudice the right of WSI to effect termination for a continuing or subsequent default.

V.

Miscellaneous

5.01 Company shall not be estopped to contest the validity of any patent included in Patent Rights of WSI.

5.02 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, and Company may assign the rights and privileges herein granted to the successors in ownership of substantially all of its Radioactivity Well Surveying business, provided any such successors shall subscribe to the terms and conditions herein, but this Agreement shall not be otherwise assignable by Company without the written consent of WSI.

5.03 The address of the parties hereto, for the purposes of notices, payments and other communication provided for herein, shall be as follows:

WELL SURVEYS, INC.
P. O. Box 1799
Houston 1, Texas

and

GUNS, INC.
P. O. Box 132
Shreveport, Louisiana

[1257]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their proper officers duly authorized and their corporate seals to be affixed as of the date first named herein.

WELL SURVEYS, INC.
By Jay G. Beaver
Vice President

ATTEST:
/s/
Secretary

GUNS, INC.
By /s/
President

ATTEST:
/s/
Secretary

[1259]

IMMUNITY AGREEMENT

THIS AGREEMENT is effective the 25th day of January, 1963 by and between WELL SURVEYS, INC. of Tulsa, Oklahoma, a corporation of Delaware, hereinafter called "WSI", and Great Guns, Inc., a corporation of Kansas, hereinafter called "Company".

I.

Recitals and Definitions

1.01 WSI is possessed of certain patents and rights with respect to patents in the Field of Radioactivity Well Surveying, and Company desires the right to conduct Radioactivity Well Surveying operations for hire with immunity from liability for infringement of the "Patent Rights of WSI", as hereinafter defined.

1.02 The term "Radioactivity Well Surveying", as used herein, shall mean logging or surveying bore holes by the detection along a bore hole of neutral particles, charged particles or electromagnetic radiations coming either from the nucleus or from the outer particles of the atom or any other radioactive effects of radioactive radiations or combinations thereof emanating from the material within or traversed by the bore hole, whether these emanations represent a natural condition or result from irradiating the formation with neutral particles, charged particles or electromagnetic radiations or any combination of them or are the result of a treatment of the formation or the bore hole capable of giving rise to such emanations, and by the utilization of these received

[1260]

radiations or particles to derive information concerning the nature or contents of the formation or the bore hole. The term "electromagnetic radiations" as used herein shall mean radiations having frequencies greater than that of ultraviolet light.

1.03 The term "Field of Radioactivity Well Surveying" as used herein shall mean all methods and apparatus used for Radioactivity Well Surveying.

1.04 The term "Radioactivity Survey" as used herein shall mean and include any logging and surveying operation in the Field of Radioactivity Well Surveying.

1.05 The term "Radioactivity Tracer Logging Service" shall mean either of the following: (a) a well logging service in which a radioactive tracer material is introduced into a single well (wherein a Radioactivity Survey may or may not have been previously conduct-

ed) and in which one or more Radioactivity Surveys are subsequently conducted in said well to obtain information regarding the effect of said tracer material; or (b) a well logging service wherein a radioactive tracer material is introduced into a control well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are conducted in one or more adjacent wells for the purpose of obtaining information regarding transmission of said tracer material from said control well to said adjacent wells.

1.06 The term "Patent Rights of WSI" as used herein shall mean the following patents:

[1261]

2,554,844
2,942,112
2,967,994

II.

Grants

2.01 WSI, warranting that it has the right to do so, hereby grants to Company, upon the terms and conditions hereinafter stated, a non-exclusive, non-transferable (except as hereinafter specified) immunity from any claim, suit or liability for infringement of Patent Rights of WSI arising from Radioactivity Well Surveying conducted by Company for others for hire during the term of this Agreement. Experimentation by Company in the Field of Radioactivity Well Surveying of a purely research or development nature without consideration of any kind flowing to Company from another shall be subject to immunity hereunder but shall not give rise to a claim for royalty.

2.02 Company shall have the right to extend to each of its customers with each Radioactivity Well Surveying operation conducted by Company the immunities granted under Section 2.01 under Patent Rights of WSI, such immunities being specifically restricted to the specific survey upon which royalty is paid under the provisions of Section 3.02.

[1262]

2.03 Since the Radioactivity Well Surveying described in Section 2.01 requires the use of instruments, the immunities therein granted shall include the right in Company to make instruments for its own use and may be extended by Company to instrument manufacturers, provided Company shall advise WSI by notice in writing of any such extension, including the name and address of each instrument manufacturer to which extension has been made, and provided any such extension shall be specifically restricted to such instruments made for and actually used by Company pursuant to the terms and conditions of this Agreement and shall cease to exist if this Agreement is terminated or if the instrument is transferred to a stranger of this Agreement except in the event such transferee has a license or immunity under Patent Rights of WSI to use such instrument, in which event the instrument shall be considered as having been made for such transferee.

III.

Payments

3.01 Company agrees to pay WSI cash consideration in the sum of *$500.00 plus royalties due from July 1, 1962 to date* upon execution and delivery of this Agreement as liquidated damages for past infringement of the WSI patent rights.

3.02 Company agrees to pay WSI as royalty on each Radioactivity Well Surveying operation conducted by Company, which, if unlicensed, would infringe the Patent Rights of WSI

[1263]

during term of this agreement an amount equal to five percent (5%) of the gross charge (exclusive of mileage) made for the survey so conducted or a sum of ten dollars ($10.00), whichever is the greater.

3.03 In the event that a service involving Radioactivity Well Surveying is one of a combination of several different services conducted by Company for the same customer on the same setup, at the same well and for a single price which is different from the total of the individual charges customarily made by Company for such services if performed separately, the "gross charge" for determining the royalty payable on such service involving Radioactivity Well Surveying shall be that proportion of the single price charged for said combined service which the individual charge customarily made by Company for the particular service involving Radioactivity Well Surveying is of the total of the individual charges made by Company for each of such services if performed separately. For the purposes of this Section 3.03, a Radioactivity Tracer Logging Service shall be construed as "on the same setup" and "at the same well" even though successive setups or a plurality of wells are actually employed in rendering such a service.

3.04 On or before the 20th day of each January, April, July and October, Company shall furnish WSI with a report in writing setting forth the following in-

formation pertaining to each Radioactivity Well Survey performed by Company during the

[1264]

preceding calendar quarter:

(a) Customer;

(b) Invoice Number;

(c) Date of Invoice;

(d) Amount on which royalty is payable;

and a summary including:

(e) Total, for all well surveys, of amounts specified in Item (d) above;

(f) Total royalty payable (Item (e) multiplied by royalty rate).

Each such statement shall be accompanied with payment for the full amount of the total royalty payable for the quarter in question.

3.05 Company shall fix charges for surveying operations conducted hereunder in its sole discretion but agrees that royalty payable hereunder shall not be less than (a) the amount which would be payable provided such charges were commensurate with the cost and value of said operations, or (b) the amount which would be payable upon its published charges for such services, whichever is greater.

3.06 Company shall keep records adequate to verify the reports and payments made pursuant to Section 3.04, and WSI shall have access during regular business hours to Company's records to the extent and only to the extent necessary to verify said reports and payments.

[1265]

IV.

Termination

4.01 If Company shall neglect or fail to render reports and make payments as and when due hereunder or shall otherwise be in default of any obligation under this Agreement, WSI shall have the right to give written notice thereof to Company, and if within sixty (60) days from and after the date of such notice Company shall not have cured such default, then WSI may, at its option, cause this Agreement to terminate forthwith by giving written notice to that effect to Company.

4.02 Company may terminate this Agreement as of the fifth anniversary date hereof or as of any successive anniversary date thereafter by giving WSI written notice of cancellation at least sixty (60) days prior to the anniversary date on which cancellation is to take effect.

4.03 Unless otherwise terminated pursuant to the provisions hereof, this Agreement shall continue in full force and effect until the expiration date of the last patent to expire under which Company is granted immunity by this Agreement.

4.04 Termination of this Agreement shall not affect the obligations of Company to make any payments which shall have accrued up to the date of such termination, and the fact that WSI shall not have terminated this Agreement pursuant to Section 4.01 be-

cause of one or more defaults by Company shall not prejudice the right of WSI to effect termination for a continuing or subsequent default.

[1266]

V.

Miscellaneous

5.01 Company shall not be estopped to contest the validity of any patent included in Patent Rights of WSI.

5.02 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, and Company may assign the rights and privileges herein granted to the successors in ownership of substantially all of its Radioactivity Well Surveying business, provided any such successors shall subscribe to the terms and conditions herein, but this Agreement shall not be otherwise assignable by Company without the written consent of WSI.

5.03 The address of the parties hereto, for the purposes of notices, payments and other communication provided for herein, shall be as follows:

WELL SURVEYS, INC.
P. O. Box 1799
Houston 1, Texas
GREAT GUNS, INC.
P. O. Box 157
Hays, Kansas

[1267]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their proper

officers duly authorized and their corporate seals to be affixed as of the date first named herein.

WELL SURVEYS, INC.
By Jay G. Beaver
Vice President

ATTEST:
/s/
Secretary

GREAT GUNS, INC.
By /s/
President

ATTEST:
/s/
Secretary

[1286]

IMMUNITY AGREEMENT

THIS AGREEMENT is effective the 1st day of March, 1963 by and between WELL SURVEYS, INC. of Tulsa, Oklahoma, a corporation of Delaware, hereinafter called "WSI", and Basin Surveys, Inc., a corporation of West Virginia, hereinafter called "Company".

I.

Recitals and Definitions

1.01 WSI is possessed of certain patents and rights with respect to patents in the Field of Radioactivity Well Surveying, and Company desires the right to conduct Radioactivity Well Surveying operations for hire with immunity from liability for infringement of the "Patent Rights of WSI", as hereinafter defined.

1.02 The term "Radioactivity Well Surveying", as used herein, shall mean logging or surveying bore holes

by the detection along a bore hole of neutral particles, charged particles or electromagnetic radiations coming either from the nucleus or from the outer particles of the atom or any other radioactive effects of radioactive radiations or combinations thereof emanating from the material within or traversed by the bore hole, whether these emanations represent a natural condition or result from irradiating the formation with neutral particles, charged particles or electromagnetic radiations or any combination of them or are the result of a treatment of the formation or the bore hole capable of giving rise to such emanations, and by the utilization of these received

[1287]

radiations or particles to derive information concerning the nature or contents of the formation or the bore hole. The term "electromagnetic radiations" as used herein shall mean radiations having frequencies greater than that of ultraviolet light.

1.03 The term "Field of Radioactivity Well Surveying" as used herein shall mean all methods and apparatus used for Radioactivity Well Surveying.

1.04 The term "Radioactivity Survey" as used herein shall mean and include any logging and surveying operation in the Field of Radioactivity Well Surveying.

1.05 The term "Radioactivity Tracer Logging Service" shall mean either of the following: (a) a well logging service in which a radioactive tracer material is introduced into a single well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radio-

activity Surveys are subsequently conducted in said well to obtain information regarding the effect of said tracer material; or (b) a well logging service wherein a radioactive tracer material is introduced into a control well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are conducted in one or more adjacent wells for the purpose of obtaining information regarding transmission of said tracer material from said control well to said adjacent wells.

1.06 The term "Patent Rights of WSI" as used herein shall mean the following patents:

[1288]

2,554,844
2,810,076
2,967,994

II.

Grants

2.01 WSI, warranting that it has the right to do so, hereby grants to Company, upon the terms and conditions hereinafter stated, a non-exclusive, non-transferable (except as hereinafter specified) immunity from any claim, suit or liability for infringement of Patent Rights of WSI arising from Radioactivity Well Surveying conducted by Company for others for hire during the term of this Agreement. Experimentation by Company in the Field of Radioactivity Well Surveying of a purely research or development nature without consideration of any kind flowing to Company from another shall be subject to immunity hereunder but shall not give rise to a claim for royalty.

2.02 Company shall have the right to extend to each of its customers with each Radioactivity Well Surveying operation conducted by Company the immunities granted under Section 2.01 under Patent Rights of WSI, such immunities being specifically restricted to the specific survey upon which royalty is paid under the provisions of Section 3.02.

[1289]

2.03 Since the Radioactivity Well Surveying described in Section 2.01 requires the use of instruments, the immunities therein granted shall include the right in Company to make instruments for its own use and may be extended by Company to instrument manufacturers, provided Company shall advise WSI by notice in writing of any such extension, including the name and address of each instrument manufacturer to which extension has been made, and provided any such extension shall be specifically restricted to such instruments made for and actually used by Company pursuant to the terms and conditions of this Agreement and shall cease to exist if this Agreement is terminated or if the instrument is transferred to a stranger of this Agreement except in the event such transferee has a license or immunity under Patent Rights of WSI to use such instrument, in which event the instrument shall be considered as having been made for such transferee.

III

Payments

3.01 Company agrees to pay WSI cash consideration in the sum of not applicable upon execution and delivery of this Agreement as liquidated damages for past infringement of the WSI patent rights.

3.02 Company agrees to pay WSI as royalty on each Radioactivity Well Surveying operation conducted by Company, which, if unlicensed,

[1290]

would infringe the Patent Rights of WSI during term of this agreement an amount equal to five percent (5%) of the gross charge (exclusive of mileage & service charge) made for the survey so conducted or a sum of ten dollars ($10.00), whichever is the greater.

3.03 In the event that a service involving Radioactivity Well Surveying is one of a combination of several different services conducted by Company for the same customer on the same setup, at the same well and for a single price which is different from the total of the individual charges customarily made by Company for such services if performed separately, the "gross charge" for determining the royalty payable on such service involving Radioactivity Well Surveying shall be that proportion of the single price charged for said combined service which the individual charge customarily made by Company for the particular service involving Radioactivity Well Surveying is of the total of the individual charges made by Company for each of such services if performed separately. For the purposes of this Section 3.03, a Radioactivity Tracer Logging Service shall be construed as "on the same setup" and "at the same well" even though successive setups or a plurality of wells are actually employed in rendering such a service.

3.04 On or before the 20th day of each month, Company shall furnish WSI with a report in writing setting forth the following information pertaining to

each Radioactivity Well Survey performed by Company during the preceding calendar month:

[1291]

(a) Customer;

(b) Invoice Number;

(c) Date of Invoice;

(d) Amount on which royalty is payable;

and a summary including:

(e) Total, for all well surveys, of amounts specified in Item (d) above;

(f) Total royalty payable (Item (e) multiplied by royalty rate).

Each such statement shall be accompanied with payment for the full amount of the total royalty payable for the month in question.

3.05 Company shall fix charges for surveying operations conducted hereunder in its sole discretion but agrees that royalty payable hereunder shall not be less than (a) the amount which would be payable provided such charges were commensurate with the cost and value of said operations, or (b) the amount which would be payable upon its published charges for such services, whichever is greater.

3.06 Company shall keep records adequate to verify the reports and payments made pursuant to Section 3.04, and WSI shall have access during regular business hours to Company's records to the extent and only to the extent necessary to verify said reports and payments.

[1292]

IV.

Termination

4.01 If Company shall neglect or fail to render reports and make payments as and when due hereunder or shall otherwise be in default of any obligation under this Agreement, WSI shall have the right to give written notice thereof to Company, and if within sixty (60) days from and after the date of such notice Company shall not have cured such default, then WSI may, at its option, cause this Agreement to terminate forthwith by giving written notice to that effect to Company.

4.02 Company may terminate this Agreement as of the fifth anniversary date hereof or as of any successive anniversary date thereafter by giving WSI written notice of cancellation at least sixty (60) days prior to the anniversary date on which cancellation is to take effect.

4.03 Unless otherwise terminated pursuant to the provisions hereof, this Agreement shall continue in full force and effect until the expiration date of the last patent to expire under which Company is granted immunity by this Agreement.

4.04 Termination of this Agreement shall not affect the obligations of Company to make any payments which shall have accrued up to the date of such termination, and the fact that WSI shall not have terminated this Agreement pursuant to Section 4.01 be-

cause of one or more defaults by Company shall not prejudice the right of WSI to effect termination for a continuing or subsequent default.

[1293]

V.

Miscellaneous

5.01. Company shall not be estopped to contest the validity of any patent included in Patent Rights of WSI.

5.02 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, and Company may assign the rights and privileges herein granted to the successors in ownership of substantially all of its Radioactivity Well Surveying business, provided any such successors shall subscribe to the terms and conditions herein, but this Agreement shall not be otherwise assignable by Company without the written consent of WSI.

5.03 The address of the parties hereto, for the purposes of notices, payments and other communication provided for herein, shall be as follows:

WELL SURVEYS, INC.
P. O. Box ~~1799~~ 589
Houston 1, Texas

BASIN SURVEYS, INC.
P. O. Box 566
Buckhannon, W. Va.

[1294]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their proper officers duly authorized and their corporate seals to be affixed as of the date first named herein.

WELL SURVEYS, INC.
By Jay G. Beaver
Vice President

ATTEST:
/s/
Secretary
(Seal)

BASIN SURVEYS, INC.
By Donald E. Clark
President

ATTEST:
/s/
Secretary

[1305]

IMMUNITY AGREEMENT

THIS AGREEMENT is effective the first day of May, 1963 by and between WELL SURVEYS, INC. of Tulsa, Oklahoma, a corporation of Delaware, hereinafter called "WSI", and GO SERVICES, INC., a corporation of Texas, hereinafter called "Company".

I.

Recitals and Definitions

1.01 WSI is possessed of certain patents and rights with respect to patents in the Field of Radioactivity Well Surveying, and Company desires the right to conduct Radioactivity Well Surveying operations for hire

with immunity from liability for infringement of the "Patent Rights of WSI", as hereinafter defined.

1.02 The term "Radioactivity Well Surveying", as used herein, shall mean logging or surveying bore holes by the detection along a bore hole of neutral particles, charged particles or electromagnetic radiations coming either from the nucleus or from the outer particles of the atom or any other radioactive effects of radioactive radiations or combinations thereof emanating from the material within or traversed by the bore hole, whether these emanations represent a natural condition or result from irradiating the formation with neutral particles, charged particles or electromagnetic radiations or any combination of them or are the result of a treatment of the formation or the bore hole capable of giving rise to such emanations, and by the utilization of these received radiations or particles to derive information concerning the nature or contents of the formation or the bore hole. The term "electromagnetic radiations" as used herein shall mean radiations having frequencies greater than that of ultraviolet light.

[1306]

1.03 The term "Field of Radioactivity Well Surveying" as used herein shall mean all methods and apparatus used for Radioactivity Well Surveying.

1.04 The term "Radioactivity Survey" as used herein shall mean and include any logging and surveying operation in the Field of Radioactivity Well Surveying.

1.05 The term "Radioactivity Tracer Logging Service" shall mean either of the following: (a) a well logging service in which a radioactive tracer material

is introduced into a single well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are subsequently conducted in said well to obtain information regarding the effect of said tracer material; or (b) a well logging service wherein a radioactive tracer material is introduced into a control well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are conducted in one or more adjacent wells for the purpose of obtaining information regarding transmission of said tracer material from said control well to said adjacent wells.

1.06 The term "Patent Rights of WSI" as used herein shall mean the following-patents:

2554844
2810076

II.

Grants

2.01 WSI, warranting that it has the right to do so, hereby grants to Company, upon the terms and conditions hereinafter stated, a non-exclusive, non-transferable (except as hereinafter specified) immunity from any claim, suit or liability for infringement of Patent Rights of WSI arising from

[1307]

Radioactivity Well Surveying conducted by Company for others for hire during the term of this Agreement. Experimentation by Company in the Field of Radioactivity Well Surveying of a purely research or development nature without consideration of any kind flowing to Company from another shall be subject to

immunity hereunder but shall not give rise to a claim for royalty.

2.02 Company shall have the right to extend to each of its customers with each Radioactivity Well Surveying operation conducted by Company the immunities granted under Section 2.01 under Patent Rights of WSI, such immunities being specifically restricted to the specific survey upon which royalty is paid under the provisions of Section 3.02.

2.03 Since the Radioactivity Well Surveying described in Section 2.01 requires the use of instruments, the immunities therein granted shall include the right in Company to make instruments for its own use and may be extended by Company to instrument manufacturers, provided Company shall advise WSI by notice in writing of any such extension, including the name and address of each instrument manufacturer to which extension has been made, and provided any such extension shall be specifically restricted to such instruments made for and actually used by Company pursuant to the terms and conditions of this Agreement and shall cease to exist if this Agreement is terminated or if the instrument is transferred to a stranger of this Agreement except in the event such transferee has a license or immunity under Patent Rights of WSI to use such instrument, in which event the instrument shall be considered as having been made for such transferee.

III.

Payments

3.01 Company agrees to pay WSI cash consideration up to September 1, 1962, in the amount of Four Thousand and no/100 ($4,000.00) Dollars, plus

[1308]

Ten ($10.00) Dollars per operation from September 1, 1962 through April 30, 1963, $1,000.00 of which said aggregate sum is paid upon execution and delivery of this agreement and as liquidated damages for past infringement of the WSI patent rights, the balance to be payable at the rate of $500.00 per month until the full aggregate consideration hereinabove set forth is fully paid off and discharged.

3.02 Company agrees to pay WSI as royalty on each Radioactivity Well Surveying operation conducted by Company, which, if unlicensed, would infringe the Patent Rights of WSI during term of this agreement an amount equal to five percent (5%) of the gross charge (exclusive of mileage) made for the survey so conducted or a sum of Ten Dollars ($10.00), whichever is the greater.

3.03 In the event that a service involving Radioactivity Well Surveying is one of a combination of several different services conducted by Company for the same customer on the same setup, at the same well and for a single price which is different from the total of the individual charges customarily made by Company for such services if performed separately, the "gross charge" for determining the royalty payable on such service involving Radioactivity Well Surveying shall be that proportion of the single price charged for said combined service which the individual charge customarily made by Company for the particular service involving Radioactivity Well Surveying is of the total of the individual charges made by Company for each of such services if performed separately. For the purposes of this Section 3.03, a Radioactivity Tracer Logging

Service shall be construed as "on the same setup" and "at the same well" even though successive setups or a plurality of wells are actually employed in rendering such a service.

[1309]

3.04 On or before the 20th day of each month, Company shall furnish WSI with a report in writing setting forth the following information pertaining to each Radioactivity Well Survey performed by Company during the preceding calendar month:

(a) Customer;

(b) Invoice Number;

(c) Date of Invoice;

(d) Amount on which royalty is payable;

and a summary including:

(e) Total, for all well surveys, of amounts specified in Item (d) above;

(f) Total royalty payable (Item (e) multiplied by royalty rate).

Each such statement shall be accompanied with payment for the full amount of the total royalty payable for the month in question.

3.05 Company shall fix charges for surveying operations conducted hereunder in its sole discretion but agrees that royalty payable hereunder shall not be less than (a) the amount which would be payable, provided such charges were commensurate with the cost and value of said operations, or (b) the amount which would be payable upon its published charges for such services, whichever is greater.

3.06 Company shall keep records adequate to verify the reports and payments made pursuant to Section

3.04, and WSI shall have access during regular business hours to Company's records to the extent and only to the extent necessary to verify said reports and payments.

[1310]

IV.

Termination

4.01 If Company shall neglect or fail to render reports and make payments as and when due hereunder or shall otherwise be in default of any obligation under this Agreement, WSI shall have the right to give written notice thereof to Company, and if within sixty (60) days from and after the date of such notice Company shall not have cured such default, then WSI may, at its option, cause this Agreement to terminate forthwith by giving written notice to that effect to Company.

4.02 Company may terminate this Agreement as of the fifth anniversary date hereof or as of any successive anniversary date thereafter by giving WSI written notice of cancellation at least sixty (60) days prior to the anniversary date on which cancellation is to take effect.

4.03 Unless otherwise terminated pursuant to the provisions hereof, this Agreement shall continue in full force and effect until the expiration date of the last patent to expire under which Company is granted immunity by this Agreement.

4.04 Termination of this Agreement shall not affect the obligations of Company to make any payments which shall have accrued up to the date of such termination, and the fact that WSI shall not have termi-

nated this Agreement pursuant to Section 4.01 because of one or more defaults by Company shall not prejudce the right of WSI to effect termination for a continuing or subsequent default.

V.

Miscellaneous

5.01 Company shall not be estopped to contest the validity of any patent included in Patent Rights of WSI.

[1311]

5.02 This Agreement shall be binding upon an inure to the benefit of the successors and assigns of the parties hereto, and Company may assign the rights and privileges herein granted to the successors in ownership of substantially all of its Radioactivity Well Surveying business, provided any such successors shall subscribe to the terms and conditions herein, but this Agreement shall not be otherwise assignable by Company without the written consent of WSI.

5.03 The address of the parties hereto, for the purposes of notices, payments and other communication provided for herein, shall be as follows:

WELL SURVEYS, INC.
P. O. Box 589
Houston 1, Texas
GO SERVICES, INC.
P. O. Box 2116
Abilene, Texas

[1312]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their proper

officers duly authorized and their corporate seals to be affixed as of the date first named herein.

WELL SURVEYS, INC.
/s/ By Jay G. Beaver
Vice President

ATTEST:
/s/
Secretary

GO SERVICES, INC.
/s/ By Glenn Doggett
President

ATTEST:
/s/
Secretary

[1323]

IMMUNITY AGREEMENT

THIS AGREEMENT is effective the 1st day of July, 1963 by and between WELL SURVEYS, INC. of Tulsa, Oklahoma, a corporation of Delaware, hereinafter called "WSI", and J. H. Barnes & H. H. Parkman a partnership dba. GOES PERFORATING & LOGGING, a corporation of ....., hereinafter called "Company".

I.

Recitals and Definitions

1.01 WSI is possesed of certain patents and rights with respect to patents in the Field of Radioactivity Well Surveying, and Company desires the right to conduct Radioactivity Well Surveying operations for hire with immunity from liability for infringement of the "Patent Rights of WSI", as hereinafter defined.

1.02 The term "Radioactivity Well Surveying", as used herein, shall mean logging or surveying bore holes by the detection along a bore hole of neutral particles, charged particles or electromagnetic radiations coming either from the nucleus or from the outer particles of the atom or any other radioactive effects of radioactive radiations or combinations thereof emanating from the material within or traversed by the bore hole, whether these emanations represent a natural condition or result from irradiating the formation with neutral particles, charged particles or electromagnetic radiations or any combination of them or are the result of a treatment of the formation or the bore hole capable of giving rise to such emanations, and by the utilization of these received [1324] radiations or particles to derive information concerning the nature or contents of the formation or the bore hole. The term "electromagnetic radiations" as used herein shall mean radiations having frequencies greater than that of ultraviolet light.

1.03 The term "Field of Radioactivity Well Surveying" as used herein shall mean all methods and apparatus used for Radioactivity Well Surveying.

1.04 The term "Radioactivity Survey" as used herein shall mean and include any logging and surveying operation in the Field of Radioactivity Well Surveying.

1.05 The term "Radioactivity Tracer Logging Service" shall mean either of the following: (a) a well logging service in which a radioactive tracer material is introduced into a single well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are subsequently conducted in said well to obtain

information regarding the effect of said tracer material; or (b) a well logging service wherein a radioactive tracer material is introduced into a control well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are conducted in one or more adjacent wells for the purpose of obtaining information regarding transmission of said tracer material from said control well to said adjacent wells.

1.06 The term "Patent Rights of WSI" as used herein shall mean the following patents:

[1325]

2,554,844
2,810,076 J. W. B.
2,967,944 J. W. B.

II.

Grants

2.01 WSI, warranting that it has the right to do so, hereby grants to Company, upon the terms and conditions hereinafter stated, a non-exclusive, non-transferable (except as hereinafter specified) immunity from any claim, suit or liability for infringement of Patent Rights of WSI arising from Radioactivity Well Surveying conducted by Company for others for hire during the term of this Agreement. Experimentation by Company in the Field of Radioactivity Well Surveying of a purely research or development nature without consideration of any kind flowing to Company from another shall be subject to immunity hereunder but shall not give rise to a claim for royalty.

2.02 Company shall have the right to extend to each of its customers with each Radioactivity Well Survey-

ing operation conducted by Company the immunities granted under Section 2.01 under Patent Rights of WSI, such immunities being specifically restricted to the specific survey upon which royalty is paid under the provisions of Section 3.02.

[1326]

2.03 Since the Radioactivity Well Surveying described in Section 2.01 requires the use of instruments, the immunities therein granted shall include the right in Company to make instruments for its own use and may be extended by Company to instrument manufacturers, provided Company shall advise WSI by notice in writing of any such extension, including the name and address of each instrument manufacturer to which extension has been made, and provided any such extension shall be specifically restricted to such instruments made for and actually used by Company pursuant to the terms and conditions of this Agreement and shall cease to exist if this Agreement is terminated or if the instrument is transferred to a stranger of this Agreement except in the event such transferee has a license or immunity under Patent Rights of WSI to use such instrument, in which event the instrument shall be considered as having been made for such transferee.

III

Payments

3.01 Company agrees to pay WSI cash consideration in the sum of not applicable upon execution and delivery of this Agreement as liquidated damages for past infringement of the WSI patent rights.

3.02 Company agrees to pay WSI as royalty on each Radioactivity Well Surveying operation conducted by Company, which, if unlicensed,

[1327]

would infringe the Patent Rights of WSI during term of this agreement an amount equal to five percent (5%) of the gross charge (exclusive of mileage) made for the survey so conducted or a sum of ten dollars ($10.00), whichever is the greater.

3.03 In the event that a service involving Radioactivity Well Surveying is one of a combination of several different services conducted by Company for the same customer on the same setup, at the same well and for a single price which is different from the total of the individual charges customarily made by Company for such services if performed separately, the "gross charge" for determining the royalty payable on such service involving Radioactivity Well Surveying shall be that proportion of the single price charged for said combined service which the individual charge customarily made by Company for the particular service involving Radioactivity Well Surveying is of the total of the individual charges made by Company for each of such services if performed separately. For the purposes of this Section 3.03, a Radioactivity Tracer Logging Service shall be construed as "on the same setup" and "at the same well" even though successive setups or a plurality of wells are actually employed in rendering such a service.

3.04 On or before the 20th day of each month, Company shall furnish WSI with a report in writing setting forth the following information pertaining to each

Radioactivity Well Survey performed by Company during the preceding calendar month;

[1328]

(a) Customer;

(b) Invoice Number;

(c) Date of Invoice;

(d) Amount on which royalty is payable;

and a summary including:

(e) Total, for all well surveys, of amounts specified in Item (d) above;

(f) Total royalty payable (Item (e) multiplied by royalty rate).

Each such statement shall be accompanied with payment for the full amount of the total royalty payable for the month in question.

3.05 Company shall fix charges for surveying operations conducted hereunder in its sole discretion but agrees that royalty payable hereunder shall not be less than (a) the amount which would be payable provided such charges were commensurate with the cost and value of said operations, or (b) the amount which would be payable upon its published charges for such services, whichever is greater.

3.06 Company shall keep records adequate to verify the reports and payments made pursuant to Section 3.04, and WSI shall have access during regular business hours to Company's records to the extent and only to the extent necessary to verify said reports and payments.

[1329]

IV.

Termination

4.01 If Company shall neglect or fail to render reports and make payments as and when due hereunder or shall otherwise be in default of any obligation under this Agreement, WSI shall have the right to give written notice thereof to Company, and if within sixty (60) days from and after the date of such notice Company shall not have cured such default, then WSI may, at its option, cause this Agreement to terminate forthwith by giving written notice to that effect to Company.

4.02 Company may terminate this Agreement as of the fifth anniversary date hereof or as of any successive anniversary date thereafter by giving WSI written notice of cancellation at least sixty (60) days prior to the anniversary date on which cancellation is to take effect.

4.03 Unless otherwise terminated pursuant to the provisions hereof, this Agreement shall continue in full force and effect until the expiration date of the last patent to expire under which Company is granted immunity by this Agreement.

4.04 Termination of this Agreement shall not affect the obligations of Company to make any payments which shall have accrued up to the date of such termination, and the fact that WSI shall not have terminated this Agreement pursuant to Section 4.01 be-

cause of one or more defaults by Company shall not prejudice the right of WSI to effect termination for a continuing or subsequent default.

[1330]

V.

Miscellaneous

5.01 Company shall not be estopped to contest the validity of any patent included in Patent Rights of WSI.

5.02 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, and Company may assign the rights and privileges herein granted to the successors in ownership of substantially all of its Radioactivity Well Surveying business, provided any such successors shall subscribe to the terms and conditions herein, but this Agreement shall not be otherwise assignable by Company without the written consent of WSI.

5.03 The address of the parties hereto, for the purposes of notices, payments and other communication provided for herein, shall be as follows:

WELL SURVEYS, INC.
P. O. Box ~~1799~~ 589
Houston 1, Texas

Goes Perforating & Logging
203 H Street Northwest
Ardmore, Oklahoma

[1331]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their proper officers duly authorized and their corporate seals to be affixed as of the date first named herein.

WELL SURVEYS, INC.
By Jay G. Beaver
Vice President

ATTEST:
/s/
Secretary

GOES PERFORATING & LOGGING
By J. W. Baruch
President Partner

ATTEST:
/s/
Secretary Partner

[803]

IMMUNITY AGREEMENT

THIS AGREEMENT is effective the 1st day of Dec. 1963 by and between WELL SURVEYS, INC. of Tulsa, Oklahoma, a corporation of Delaware, hereinafter called "WSI", and JETCO INC., a corporation of Oklahoma, hereinafter called "Company".

I.

Recitals and Definitions

1.01 WSI is possessed of certain patents and rights with respect to patents in the Field of Radioactivity Well Surveying, and Company desires the right to conduct Radioactivity Well Surveying operations for hire

with immunity from liability for infringement of the "Patent Rights of WSI", as hereinafter defined.

1.02 The term "Radioactivity Well Surveying", as used herein, shall mean logging or surveying bore holes by the detection along a bore hole of neutral particles, charged particles or electromagnetic radiations coming either from the nucleus or from the outer particles of the atom or any other radioactive effects of radioactive radiations or combinations thereof emanating from the material within or traversed by the bore hole, whether these emanations represent a natural condition or result from irradiating the formation with neutral particles, charged particles or electromagnetic radiations or any combination of them or are the result of a treatment of the formation or the bore hole capable of giving rise to such emanations, and by the utilization of these received

[804]

radiations or particles to derive information concerning the nature or contents of the formation or the bore hole. The term "electromagnetic radiations" as used herein shall mean radiations having frequencies greater than that of ultraviolet light.

1.03 The term "Field of Radioactivity Well Surveying" as used herein shall mean all methods and apparatus used for Radioactivity Well Surveying.

1.04 The term "Radioactivity Survey" as used herein shall mean and include any logging and surveying operation in the Field of Radioactivity Well Surveying.

1.05 The term "Radioactivity Tracer Logging Service" shall mean either of the following: (a) a well

logging service in which a radioactive tracer material is introduced into a single well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are subsequently conducted in said well to obtain information regarding the effect of said tracer material; or (b) a well logging service wherein a radioactive tracer material is introduced into a control well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are conducted in one or more adjacent wells for the purpose of obtaining information regarding transmission of said tracer material from said control well to said adjacent wells.

1.06 The term "Patent Rights of WSI" as used herein shall mean the following patents:

[805]

Swift 2,554,844
Peterson 2,967,994

II.

Grants

2.01 WSI, warranting that it has the right to do so, hereby grants to Company, upon the terms and conditions hereinafter stated, a non-exclusive, non-transferable (except as hereinafter specified, immunity from any claim, suit or liability for infringement of Patent Rights of WSI arising from Radioactivity Well Surveying conducted by Company for others for hire during the term of this Agreement. Experimentation by Company in the Field of Radioactivity Well Surveying of a purely research or development nature without consideration of any kind flowing to Company from another

shall be subject to immunity hereunder but shall not give rise to a claim for royalty.

2.02 Company shall have the right to extend to each of its customers with each Radioactivity Well Surveying operation conducted by Company the immunities granted under Section 2.01 under Patent Rights of WSI, such immunities being specifically restricted to the specific survey upon which royalty is paid under the provisions of Section 3.02.

[806]

2.03 Since the Radioactivity Well Surveying described in Section 2.01 requires the use of instruments, the immunities therein granted shall include the right in Company to make instruments for its own use and may be extended by Company to instrument manufacturers, provided Company shall advise WSI by notice in writing of any such extension, including the name and address of each instrument manufacturer to which extension has been made, and provided any such extension shall be specifically restricted to such instruments made for and actually used by Company pursuant to the terms and conditions of this Agreement and shall cease to exist if this Agreement is terminated or if the instrument is transferred to a stranger of this Agreement except in the event such transferee has a license or immunity under Patent Rights of WSI to use such instrument, in which event the instrument shall be considered as having been made for such transferee.

III.

Payments

3.01 Company agrees to pay WSI cash consideration in the sum of one-hundred dollars upon execution

and delivery of this Agreement as liquidated damages for past infringement of the WSI patent rights.

3.02 Company agrees to pay WSI as royalty on each Radioactivity Well Surveying operation conducted by Company, which if unlicensed,

[807]

would infringe the Patent Rights of WSI during term of this agreement an amount equal to five percent (5%) of the gross charge (exclusive of mileage) made for the survey so conducted or a sum of ten dollars ($10.00), whichever is the greater.

3.03 In the event that a service involving Radioactivity Well Surveying is one of a combination of several different services conducted by Company for the same customer on the same setup, at the same well and for a single price which is different from the total of the individual charges customarily made by Company for such services if performed separately, the "gross charge" for determining the royalty payable on such service involving Radioactivity Well Surveying shall be that proportion of the single price charged for said combined service which the individual charge customarily made by Company for the particular service involving Radioactivity Well Surveying is of the total of the individual charges made by Company for each of such services if performed separately. For the purposes of this Section 3.03, a Radioactivity Tracer Logging Service shall be construed as "on the same setup" and "at the same well" even though successive setups or a plurality of wells are actually employed in rendering such a service.

3.04 On or before the 20th day of each month, Company shall furnish WSI with a report in writing

setting forth the following information pertaining to each Radioactivity Well Survey performed by Company during the preceding calendar month;

[808]

(a) Customer;

(b) Invoice Number;

(c) Date of Invoice;

(d) Amount on which royalty is payable;

and a summary including:

(e) Total, for all well surveys, of amounts specified in Item (d) above;

(f) Total royalty payable (Item (e) multiplied by royalty rate).

Each such statement shall be accompanied with payment for the full amount of the total royalty payable for the month in question.

3.05 Company shall fix charges for surveying operations conducted hereunder in its sole discretion but agrees that royalty payable hereunder shall not be less than (a) the amount which would be payable provided such charges were commensurate with the cost and value of said operations, or (b) the amount which would be payable upon its published charges for such services, whichever is greater.

3.06 Company shall keep records adequate to verify the reports and payments made pursuant to Section 3.04, and WSI shall have access during regular business hours to Company's records to the extent and only to the extent necessary to verify said reports and payments.

[809]

IV.

Termination

4.01 If Company shall neglect or fail to render reports and make payments as and when due hereunder or shall otherwise be in default of any obligation under this Agreement, WSI shall have the right to give written notice thereof to Company, and if within sixty (60) days from and after the date of such notice Company shall not have cured such default, then WSI may, at its option, cause this Agreement to terminate forthwith by giving written notice to that effect to Company.

4.02 Company may terminate this Agreement as of the fifth anniversary date hereof or as of any successive anniversary date thereafter by giving WSI written notice of cancellation at least sixty (60) days prior to the anniversary date on which cancellation is to take effect.

4.03 Unless otherwise terminated pursuant to the provisions hereof, this Agreement shall continue in full force and effect until the expiration date of the last patent to expire under which Company is granted immunity by this Agreement.

4.04 Termination of this Agreement shall not affect the obligations of Company to make any payments which shall have accrued up to the date of such termination, and the fact that WSI shall not have terminated this Agreement pursuant to Section 4.01 because of one or more defaults by Company shall not prejudice the right of WSI to effect termination for a continuing or subsequent default.

[810]

V.

Miscellaneous

5.01 Company shall not be estopped to contest the validity of any patent included in Patent Rights of WSI.

5.02 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, and Company may assign the rights and privileges herein granted to the successors in ownership of substantially all of its Radioactivity Well Surveying business, provided any such successors shall subscribe to the terms and conditions herein, but this Agreement shall not be otherwise assignable by Company without the written consent of WSI.

5.03 The address of the parties hereto, for the purposes of notices, payments and other communication provided for herein, shall be as follows:

WELL SURVEYS, INC.
P. O. Box ~~1799~~ 589
Houston 1, Texas
Jetco Inc.
415 S. Independence
Enid, Oklahoma

[811]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their proper officers duly authorized and their corporate seals to be affixed as of the date first named herein.

WELL SURVEYS, INC.
By Jay G. Beaver
Vice President

ATTEST:
/s/
Secretary

JET-CO INC.
By K. L. Booth
President

WITNESS:
/s/
Secretary

[812]

IMMUNITY AGREEMENT

THIS AGREEMENT is effective the first day of January, 1964 by and between DRESSER INDUSTRIES, INC. of Houston, Texas, a corporation of Delaware, hereinafter called "DII", and ~~H. W. Patton~~ dba Star Jet Oil Well Service, Inc., a corporation of Okla, hereinafter called "Company".

I.

Recitals and Definitions

1.01 DII is possessed of certain patents and rights with respect to patents in the Field of Radioactivity Well Surveying, and Company desires the right to conduct Radioactivity Well Surveying operations for hire with immunity from liability for infringement of the "Patent Rights of DII", as hereinafter defined.

1.02 The term "Radioactivity Well Surveying", as used herein, shall mean logging or surveying bore holes by the detection along a bore hole of neutral particles,

charged particles or electromagnetic radiations coming either from the nucleus or from the outer particles of the atom or any other radioactive effects of radioactive radiations or combinations thereof emanating from the material within or traversed by the bore hole, whether these emanations represent a natural condition or result from irradiating the formation with neutral particles, charged particles or electromagnetic radiations or any combination of them or are the result of a treatment of the formation or the bore hole capable of giving rise to such emanations, and by the utilization of these received radiations or particles to derive information concerning the nature or contents of the formation or the bore

[813]

hole. The term "electromagnetic radiations" as used herein shall mean radiations having frequencies greater than that of ultraviolet light.

1.03 The term "Field of Radioactivity Well Surveying" as used herein shall mean all methods and apparatus used for Radioactivity Well Surveying.

1.04 The term "Radioactivity Survey" as used herein shall mean and include any logging and surveying operation in the Field of Radioactivity Well Surveying.

1.05 The term "Radioactivity Tracer Logging Service" shall mean either of the following: (a) a well logging service in which a radioactive tracer material is introduced into a single well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are subsequently conducted in said well to obtain information regarding the effect of said tracer material; or

(b) a well logging service wherein a radioactive tracer material is introduced into a control well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are conducted in one or more adjacent wells for the purpose of obtaining information regarding transmission of said tracer material from said control well to said adjacent wells.

1.06 The term "Patents Rights of DII" as used herein shall mean the following patents:

Swift—2,554,844
Peterson—2,967,994

[814]

II.

Grants

2.01 DII, warranting that it has the right to do so, hereby grants to Company, upon the terms and conditions hereinafter stated, a non-exclusive, non-transferable (except as hereinafter specified) immunity from any claim, suit or liability for infringement of Patent Rights of DII arising from Radioactivity Well Surveying conducted by Company for others for hire during the term of this Agreement. Experimentation by Company in the Field of Radioactivity Well Surveying of a purely research or development nature without consideration of any kind flowing to Company from another shall be subject to immunity hereunder but shall not give rise to a claim for royalty.

2.02 Company shall have the right to extend to each of its customers with each Radioactivity Well Surveying operation conducted by Company the immunities

granted under Section 2.01 under Patent Rights of DII, such immunities being specifically restricted to the specific survey upon which royalty is paid under the provisions of Section 3.02.

2.03 Since the Radioactivity Well Surveying described in Section 2.01 requires the use of instruments, the immunities therein granted shall include the right in Company to make instruments for its own use and may be extended by Company to instrument manufacturers, provided Company shall advise DII by notice in writing of any such extension, including the name and address of each instrument manufacturer to which extension has been made, and provided any such extension shall be specifically restricted to such instruments made for and actually used by Company pursuant to the terms and conditions of this Agreement and shall cease to exist if this Agreement is terminated

[815]

or if the instrument is transferred to a stranger of this Agreement except in the event such transferee has a license or immunity under Patent Rights of DII to use such instrument, in which event the instrument shall be considered as having been made for such transferee.

III.

Payments

3.01 Company agrees to pay DII cash consideration in the sum of not applicable upon execution and delivery of this Agreement as liquidated damages for past infringement of the DII patent rights.

3.02 Company agrees to pay DII as royalty on each Radioactivity Well Surveying operation conducted by Company, which, if unlicensed, would infringe the

Patent Rights of DII during the term of this agreement an amount equal to five per cent (5%) of the gross charge (exclusive of mileage) made for the survey so conducted or a sum of ten dollars ($10.00), whichever is the greater.

3.03 In the event that a service involving Radioactivity Well Surveying is one of a combination of several different services conducted by Company for the same customer on the same setup, at the same well and for a single price which is different from the total of the individual charges customarily made by Company for such services if performed separately, the "gross charge" for determining the royalty payable on such service involving Radioactivity Well Surveying shall be that proportion of the single price charged for said combined service which the individual charge customarily made by Company for the particular service involving Radioactivity

[816]

Well Surveying is of the total of the individual charges made by Company for each of such services if performed separately. For the purposes of this Section 3.03, a Radioactivity Tracer Logging Service shall be construed as "on the same setup" and "at the same well" even though successive setups or a plurality of wells are actually employed in rendering such a service.

3.04 On or before the 20th day of each month, Company shall furnish DII with a report in writing setting forth the following information pertaining to each Radioactivity Well Survey performed by Company during the preceding calendar month:

(a) Customer;

(b) Invoice number;

(c) Date of invoice;

(d) Amount on which royalty is payable;

and a summary including:

(e) Total, for all well surveys, of amounts specified in Item (d) above;

(f) Total royalty payable (Item (e) multiplied by royalty rate).

Each such statement shall be accompanied with payment for the full amount of the total royalty payable for the month in question.

3.05 Company shall fix charges for surveying operations conducted hereunder in its sole discretion but agrees that royalty payable hereunder shall not be less than (a) the amount which would be payable provided such charges were commensurate with the cost and value of said operations, or (b) the amount which would be payable upon its published charges for such services, whichever is greater.

[817]

3.06 Company shall keep records adequate to verify the reports and payments made pursuant to Section 3.04, and DII shall have excess during regular business hours to Company's records to the extent and only to the extent necessary to verify said reports and payments.

IV.

Termination

4.01 If Company shall neglect or fail to render reports and make payments as and when due hereunder or shall otherwise be in default of any obligation under this Agreement, DII shall have the right to give written

notice thereof to Company, and if within sixty (60) days from and after the date of such notice Company shall not have cured such default, then DII may, at its option, cause this Agreement to terminate forthwith by giving written notice to that effect to Company.

4.02 Company may terminate this Agreement as of the fifth anniversary date hereof or as of any successive anniversary date thereafter by giving DII written notice of cancellation at least sixty (60) days prior to the anniversary date on which cancellation is to take effect.

4.03 Unless otherwise terminated pursuant to the provisions hereof, this Agreement shall continue in full force and effect until the expiration date of the last patent to expire under which Company is granted immunity by this Agreement.

4.04 Termination of this Agreement shall not affect the obligations of Company to make any payments which shall have accrued up to the date of such termination, and the fact that DII shall not have terminated this Agreement pursuant to Section 4.01 because of one or more defaults by Company shall not prejudice the right of DII to effect termination for a continuing or subsequent default.

[*Printer's Note: Record page 817 partially illegible and may not be entirely correct.*]

[818]

V.

Miscellaneous

5.01 Company shall not be estopped to contest the validity of any patent included in Patent Rights of DII.

5.02 This Agreement shall be binding upon and

inure to the benefit of the successors and assigns of the parties hereto, and Company may assign the rights and privileges herein granted to the successors in ownership of substantially all of its Radioactivity Well Surveying business, provided any such successors shall subscribe to the terms and conditions herein, but this Agreement shall not be otherwise assignable by Company without the written consent of DII.

5.03 The address of the parties hereto, for the purposes of notices, payments and other communication provided for herein, shall be as follows:

DRESSER INDUSTRIES, INC.
P. O. Box 589
Houston, Texas 77001

STAR JET OIL WELL SERVICE
P. O. Box 15082
Oklahoma City, Oklahoma

[819]

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument and affixed their seals as of the date first named herein.

DRESSER INDUSTRIES, INC.
By Jay G. Beaver
Manager of Patent Licensing

ATTEST:
/s/
Assistant Secretary

STAR JET OIL WELL
SERVICES INC.
By H. W. Patton
President

ATTEST:
/s/
Secretary

[1333]

IMMUNITY AGREEMENT

THIS AGREEMENT is effective the first day of January, 1964 by and between DRESSER INDUSTRIES, INC. of Houston, Texas, a corporation of Delaware, hereinafter called "DII", and Go Electronic Surveys Inc., a corporation of West Virginia, hereinafter called "Company".

I.

Recitals and Definitions

1.01 DII is possessed of certain patents and rights with respect to patents in the Field of Radioactivity Well Surveying, and Company desires the right to conduct Radioactivity Well Surveying operations for hire with immunity from liability for infringement of the "Patent Rights of DII", as hereinafter defined.

1.02 The term "Radioactivity Well Surveying", as used herein, shall mean logging or surveying bore holes by the detection along a bore hole of neutral particles, charged particles or electromagnetic radiations coming either from the nucleus or from the outer particles of the atom or any other radioactive effects of radioactive radiations or combinations thereof emanating from the material within or traversed by the bore hole, whether these emanations represent a natural condition or result from irradiating the formation with neutral particles, charged particles or electromagnetic radiations or any combination of them or are the result of a treatment of the formation or the bore hole capable of giving rise to such emanations, and by the utilization of these received radiations or particles to derive informa-

tion concerning the nature or contents of the formation or the bore

[1334]

hole. The term "electromagnetic radiations" as used herein shall mean radiations having frequencies greater than that of ultraviolet light.

1.03 The term "Field of Radioactivity Well Surveying" as used herein shall mean all methods and apparatus used for Radioactivity Well Surveying.

1.04 The term "Radioactivity Survey" as used herein shall mean and include any logging and surveying operation in the Field of Radioactivity Well Surveying.

1.05 The term "Radioactivity Tracer Logging Service" shall mean either of the following: (a) a well logging service in which a radioactive tracer material is introduced into a single well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are subsequently conducted in said well to obtain information regarding the effect of said tracer material; or (b) a well logging service wherein a radioactive tracer material is introduced into a control well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are conducted in one or more adjacent wells for the purpose of obtaining information regarding transmission of said tracer material from said control well to said adjacent wells.

1.06 The term "Patents Rights of DII" as used herein shall mean the following patents:

2,554,844
2,933,609
2,967,994
2,810,076
2,942,112

[1335]

II.

Grants

2.01 DII, warranting that it has the right to do so, hereby grants to Company, upon the terms and conditions hereinafter stated, a non-exclusive, non-transferable (except as hereinafter specified) immunity from any claim, suit or liability for infringement of Patent Rights of DII arising from Radioactivity Well Surveying conducted by Company for others for hire during the term of this Agreement. Experimentation by Company in the Field of Radioactivity Well Surveying of a purely research or development nature without consideration of any kind flowing to Company from another shall be subject to immunity hereunder but shall not give rise to a claim for royalty.

2.02 Company shall have the right to extend to each of its customers with each Radioactivity Well Surveying operation conducted by Company the immunities granted under Section 2.01 under Patent Rights of DII, such immunities being specifically restricted to the specific survey upon which royalty is paid under the provisions of Section 3.02.

2.03 Since the Radioactivity Well Surveying described in Section 2.01 requires the use of instruments,

the immunities therein granted shall include the right in Company to make instruments for its own use and may be extended by Company to instrument manufacturers, provided Company shall advise DII by notice in writing of any such extension, including the name and address of each instrument manufacturer to which extension has been made, and provided any such extension shall be specifically restricted to such instruments made for and actually used by Company pursuant to the terms and conditions of this Agreement and shall cease to exist if this Agreement is terminated

[1336]

or if the instrument is transferred to a stranger of this Agreement except in the event such transferee has a license or immunity under Patent Rights of DII to use such instrument, in which event the instrument shall be considered as having been made for such transferee.

III.

Payments

3.01 Company agrees to pay DII cash consideration in the sum of Fifteen Hundred and no 100ths ($1,500.00) Dollars upon execution and delivery of this Agreement as liquidated damages for past infringement of the DII patent rights.

3.02 Company agrees to pay DII as royalty on each Radioactivity Well Surveying operation conducted by Company, which, if unlicensed, would infringe the Patent Rights of DII during the term of this agreement an amount equal to five per cent (5%) of the gross charge (exclusive of mileage) made for the survey so conducted or a sum of ten dollars ($10.00), whichever is the greater.

3.03 In the event that a service involving Radioactivity Well Surveying is one of a combination of several different services conducted by Company for the same customer on the same setup, at the same well and for a single price which is different from the total of the individual charges customarily made by Company for such services if performed separately, the "gross charge" for determining the royalty payable on such service involving Radioactivity Well Surveying shall be that proportion of the single price charged for said combined service which the individual charge customarily made by Company for the particular service involving Radioactivity

[1337]

Well Surveying is of the total of the individual charges made by Company for each of such services if performed separately. For the purposes of this Section 3.03, a Radioactivity Tracer Logging Service shall be construed as "on the same setup" and "at the same well" even though successive setups or a plurality of wells are actually employed in rendering such a service.

3.04 On or before the 20th day of each month, Company shall furnish DII with a report in writing setting forth the following information pertaining to each Radioactivity Well Survey performed by Company during the preceding calendar month:

(a) * * * * *

(b) Invoice number;

(c) Date of invoice;

(d) Amount on which royalty is payable;

and a summary including:

(e) Total, for all well surveys, of amounts specified in Item (d) above;

(f) Total royalty payable (Item (e) multiplied by royalty rate).

Each such statement shall be accompanied with payment for the full amount of the total royalty payable for the month in question.

3.05 Company shall fix charges for surveying operations conducted hereunder in its sole discretion but agrees that royalty payable hereunder shall not be less than (a) the amount which would be payable provided such charges were commensurate with the cost and value of said operations, or (b) the amount which would be payable upon its published charges for such services, whichever is greater.

[1338]

3.06 Company shall keep records adequate to verify the reports and payments made pursuant to Section 3.04, and DII shall have access during regular business hours to Company's records to the extent and only to the extent necessary to verify said reports and payments.

VI.

Termination

4.01 If Company shall neglect or fail to render reports and make payments as and when due hereunder or shall otherwise be in default of any obligation under this Agreement, DII shall have the right to give written notice thereof to Company, and if within sixty (60) days from and after the date of such notice Com-

pany shall not have cured such default, then DII may, at its option, cause this Agreement to terminate forthwith by giving written notice to that effect to Company.

4.02 Company may terminate this Agreement as of the fifth anniversary date hereof or as of any successive anniversary date thereafter by giving DII written notice of cancellation at least sixty (60) days prior to the anniversary date on which cancellation is to take effect.

4.03 Unless otherwise terminated pursuant to the provisions hereof, this Agreement shall continue in full force and effect until the expiration date of the last patent to expire under which Company is granted immunity by this Agreement.

4.04 Termination of this Agreement shall not affect the obligations of Company to make any payments which shall have accrued up to the date of such termination, and the fact that DII shall not have terminated this Agreement pursuant to Section 4.01 because of one or more defaults by Company shall not prejudice the right of DII to effect termination for a continuing or subsequent default.

[1339]

V.

Miscellaneous

5.01 Company shall not be estopped to contest the validity of any patent included in Patent Rights of DII.

5.02 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, and Company may assign the rights and

privileges herein granted to the successors in ownership of substantially all of its Radioactivity Well Surveying business, provided any such successors shall subscribe to the terms and conditions herein, but this Agreement shall not be otherwise assignable by Company without the written consent of DII.

5.03 The address of the parties hereto, for the purposes of notices, payments and other communication provided for herein, shall be as follows:

DRESSER INDUSTRIES, INC.
P. O. Box 589
Houston, Texas 77001

GO ELECTRONIC SURVEYS, INC.
3400 Seventh Street, East
Parkersburg, West Virginia

[1340]

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument and affixed their seals as of the date first named herein.

DRESSER INDUSTRIES, INC.
By Jay G. Beaver
Manager of Patent Licensing

ATTEST:
/s/
Assistant Secretary

GO ELECTRONIC SURVEYS, INC.
By /s/
President

ATTEST:
/s/
Secretary

[820]

IMMUNITY AGREEMENT

THIS AGREEMENT is effective the 1st day of February, 1964 by and between WELL SURVEYS, INC. of Houston, Texas, a corporation of Delaware, hereinafter called "WSI", and Lewis L. French dba French Well Surveys, a corporation of ....., hereinafter called "Company".

I.

Recitals and Definitions

1.01 WSI is possessed of certain patents and rights with respect to patents in the Field of Radioactivity Well Surveying, and Company desires the right to conduct Radioactivity Well Surveying operations for hire with immunity from liability for infringement of the "Patent Rights of WSI", as hereinafter defined.

1.02 The term "Radioactivity Well Surveying", as used herein, shall mean logging or surveying bore holes by the detection along a bore hole of neutral particles, charged particles or electromagnetic radiations coming either from the nucleus or from the outer particles of the atom or any other radioactive effects of radioactive radiations or combinations thereof emanating from the material within or traversed by the bore hole, whether these emanations represent a natural condition or result from irradiating the formation with neutral particles, charged particles or electromagnetic radiations or any combination of them or are the result of a treatment of the formation or the bore hole capable of giving rise to such emanations, and by the

[821]

utilization of these received radiations or particles to derive information concerning the nature or contents of the formation or the bore hole. The term "electromagnetic rediations" as used herein shall mean radiations having frequencies greater than that of ultraviolet light.

1.03 The term "Field of Radioactivity Well Surveying" as used herein shall mean all methods and apparatus used for Radioactivity Well Surveying.

1.04 The term "Radioactivity Survey" as used herein shall mean and include any logging and surveying operation in the Field of Radioactivity Well Surveying.

1.05 The term "Radioactivity Tracer Logging Service" shall mean either of the following: (a) a well logging service in which a radioactive tracer material is introduced into a single well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are subsequently conducted in said well to obtain information regarding the effect of said tracer material; or (b) a well logging service wherein a radioactive tracer material is introduced into a control well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are conducted in one or more adjacent wells for the purpose of obtaining information regarding transmission of said tracer material from said control well to said adjacent wells.

[822]

1.06 The term "Patent Rights of WSI" as used herein shall mean the following patents:

Swift—2,554,844

Peterson—2,967,994

II.

Grants

2.01 WSI, warranting that it has the right to do so, hereby grants to Company, upon the terms and conditions hereinafter stated, a non-exclusive, non-transferable (except as hereinafter specified) immunity from any claim, suit or liability for infringement of Patent Rights of WSI arising form Radioactivity Well Surveying conducted by Company for others for hire during the term of this Agreement. Experimentation by Company in the Field of Radioactivity Well Surveying of a purely research or development nature without consideration of any kind flowing to Company from another shall be subject to immunity hereunder but shall not give rise to a claim for royalty.

2.02 Company shall have the right to extend to each of its customers with each Radioactivity Well Surveying operation conducted by Company the immunities granted under Section 2.01 under Patent Rights of WSI, such immunities being specifically restricted to the specific survey upon which royalty is paid under the provisions of Section 3.02.

[823]

2.03 Since the Radioactivity Well Surveying described in Section 2.01 requires the use of instruments, the immunities therein granted shall include the right in Company to make instruments for its own use and may be extended by Company to instrument manufacturers, provided Company shall advise WSI by notice in writing of any such extension, including the name and address of each instrument manufacturer to which extension has been made, and provided any such ex-

tension shall be specifically restricted to such instruments made for and actually used by Company pursuant to the terms and conditions of this Agreement and shall cease to exist if this Agreement is terminated or if the instrument is transferred to a stranger of this Agreement except in the event such transferee has a license or immunity under Patent Rights of WSI to use such instrument, in which event the instrument shall be considered as having been made for such transferee.

III.

Payments

3.01 Company agrees to pay WSI cash consideration in the sum of not applicable upon execution and delivery of this Agreement as liquidated damages for past infringement of the WSI patent rights.

3.02 Company agrees to pay WSI as royalty on each Radioactivity Well Surveying operation conducted by Company, which, if unlicensed, would infringe the Patent Rights of WSI during the term of this agreement an amount equal to five percent (5%) of the gross charge (exclusive of mileage) made for the survey so conducted or a sum of ten dollars ($10.00), whichever is the greater.

[824]

3.03 In the event that a service involving Radioactivity Well Surveying is one of a combination of several different services conducted by Company for the same customer on the same setup, at the same well and for a single price which is different from the total of the individual charges customarily made by Company for such services if performed separately, the "gross charge" for determining the royalty payable on such

service involving Radioactivity Well Surveying shall be that proportion of the single price charged for said combined service which the individual charge customarily made by Company for the particular service involving Radioactivity Well Surveying is of the total of the individual charges made by Company for each of such services if performed separately. For the purposes of this Section 3.03, a Radioactivity Tracer Logging Service shall be construed as "on the same setup" and "at the same well" even though successive setups or a plurality of wells are actually employed in rendering such a service.

3.04 On or before the 20th day of each month, Company shall furnish WSI with a report in writing setting forth the following information pertaining to each Radioactivity Well Survey performed by Company during the preceding calendar month:

(a) Customer;

(b) Invoice number;

(c) Date of invoice;

(d) Amount on which royalty is payable;

and a summary including:

[825]

(e) Total, for all well surveys, of amounts specified in Item (d) above;

(f) Total royalty payable (Item (e) multiplied by royalty rate).

Each such statement shall be accompanied with payment for the full amount of the total royalty payable for the month in question.

3.05 Company shall fix charges for surveying operations conducted hereunder in its sole discretion but

agrees that royalty payable hereunder shall not be less than (a) the amount which would be payable provided such charges were commensurate with the cost and value of said operations, or (b) the amount which would be payable upon its published charges for such services, whichever is greater.

3.06 Company shall keep records adequate to verify the reports and payments made pursuant to Section 3.04, and WSI shall have access during regular business hours to Company's records to the extent and only to the extent necessary to verify said reports and payments.

IV.

Termination

4.01 If Company shall neglect or fail to render reports and make payments as and when due hereunder or shall otherwise be in default of any obligation under this Agreement, WSI shall have the right to give written notice thereof to Company, and if within sixty (60) days from and after the date of such notice Company shall not have cured such default, then WSI may, at its option, cause this Agreement to terminate forthwith by giving written notice to that effect to Company.

[826]

4.02 Company may terminate this Agreement as of the fifth anniversary date hereof or as of any successive anniversary date thereafter by giving WSI written notice of cancellation at least sixty (60) days prior

to the anniversary date on which cancellation is to take effect.

4.03 Unless otherwise terminated pursuant to the provisions hereof, this Agreement shall continue in full force and effect until the expiration date of the last patent to expire under which Company is granted immunity by this Agreement.

4.04 Termination of this Agreement shall not affect the obligations of Company to make any payments which shall have accrued up to the date of such termination, and the fact that WSI shall not have terminated this Agreement pursuant to Section 4.01 because of one or more defaults by Company shall not prejudice the right of WSI to effect termination for a continuing or subsequent default.

V.

Miscellaneous

5.01 Company shall not be estopped to contest the validity of any patent included in Patent Rights of WSI.

5.02 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, and Company may assign the rights and privileges herein granted to the successors in ownership of substantially all of its Radioactivity Well Surveying business, provided any such successors shall subscribe to

[827]

the terms and conditions herein, but this Agreement shall not be otherwise assignable by Company without the written consent of WSI.

5.03 The address of the parties hereto, for the purposes of notices, payments and other communication provided for herein, shall be as follows:

WELL SURVEYS, INC.
P. O. Box 589
Houston, Texas 77001

French Well Surveys
P. O. Box 36188
Houston, Texas 77036

[828]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their proper officers duly authorized and their corporate seals to be affixed as of the date first named herein.

WELL SURVEYS, INC.
/s/ By Jay G. Beaver
Vice President

ATTEST:
/s/
Secretary

FRENCH WELL SURVEYS
/s/ By Lewis L. French
President

Lewis L. French
Owner

ATTEST:
/s/
~~Secretary~~ Witness

[830]

IMMUNITY AGREEMENT

THIS AGREEMENT is effective the 24th day of February, 1964 by and between WELL SURVEYS, INC. of Tulsa, Oklahoma, a corporation of Delaware, hereinafter called "WSI", and Luling Perforators, Incorporated, a corporation of Texas, hereinafter called "Company".

I.

Recitals and Definitions

1.01 WSI is possessed of certain patents and rights with respect to patents in the Field of Radioactivity Well Surveying, and Company desires the right to conduct Radioactivity Well Surveying operations for hire with immunity from liability for infringement of the "Patent Rights of WSI", as hereinafter defined.

1.02 The term "Radioactivity Well Surveying", as used herein, shall mean logging or surveying bore holes by the detection along a bore hole of neutral particles, charged particles or electromagnetic radiations coming either from the nucleus or from the outer particles of the atom or any other radioactive effects of radioactive radiations or combinations thereof emanating from the material within or traversed by the bore hole, whether these emanations represent a natural condition or result from irradiating the formation with neutral particles, charged particles or electromagnetic radiations or any combination of them or are the result of a treatment of the formation or the bore hole capable of giving rise to such emanations, and by the utilization of these received

[831]

radiations or particles to derive information concerning the nature or contents of the formation or the bore hole. The term "electromagnetic radiations" as used herein shall mean radiations having frequencies greater than that of ultraviolet light.

1.03 The term "Field of Radioactivity Well Surveying" as used herein shall mean all methods and apparatus used for Radioactivity Well Surveying.

1.04 The term "Radioactivity Survey" as used herein shall mean and include any logging and surveying operation in the Field of Radioactivity Well Surveying.

1.05 The term "Radioactivity Tracer Logging Service" shall mean either of the following: (a) a well logging service in which a radioactive tracer material is introduced into a single well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are subsequently conducted in said well to obtain information regarding the effect of said tracer material; or (b) a well logging service wherein a radioactive tracer material is introduced into a control well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are conducted in one or more adjacent wells for the purpose of obtaining information regarding transmission of said tracer material from said control well to said adjacent wells.

1.06 The term "Patent Rights of WSI" as used herein shall mean the following patents:

[832]

Swift #2,554,844
Peterson #2,967,994

II.

Grants

2.01 WSI, warranting that it has the right to do so, hereby grants to Company, upon the terms and conditions hereinafter stated, a non-exclusive, non-transferable (except as hereinafter specified) immunity from any claim, suit or liability for infringement of Patent Rights of WSI arising from Radioactivity Well Surveying conducted by Company for others for hire during the term of this Agreement. Experimentation by Company in the Field of Radioactivity Well Surveying of a purely research or development nature without consideration of any kind flowing to Company from another shall be subject to immunity hereunder but shall not give rise to a claim for royalty.

2.02 Company shall have the right to extend to each of its customers with each Radioactivity Well Surveying operation conducted by Company the immunities granted under Section 2.01 under Patent Rights of WSI, such immunities being specifically restricted to the specific survey upon which royalty is paid under the provisions of Section 3.02.

[833]

2.03 Since the Radioactivity Well Surveying described in Section 2.01 requires the use of instruments, the immunities therein granted shall include the right in Company to make instruments for its own use and may be extended by Company to instrument-manufacturers, provided Company shall advise WSI by notice in writing of any such extension, including the name and address of each instrument manufacturer to which extension has been made, and provided any

such extension shall be specifically restricted to such instruments made for and actually used by Company pursuant to the terms and conditions of this Agreement and shall cease to exist if this Agreement is terminated or if the instrument is transferred to a stranger of this Agreement except in the event such transferee has a license or immunity under Patent Rights of WSI to use such instrument, in which event the instrument shall be considered as having been made for such transferee.

III

Payments

3.01 Company agrees to pay WSI cash consideration in the sum of none upon execution and delivery of this Agreement as liquidated damages for past infringement of the WSI patent rights.

3.02 Company agrees to pay WSI as royalty on each Radioactivity Well Surveying operation conducted by Company, which, if unlicensed,

[834]

would infringe the Patent Rights of WSI during term of this agreement an amount equal to five percent (5%) of the gross charge (exclusive of mileage) made for the survey so conducted or a sum of ten dollars ($10.00), whichever is the greater.

3.03 In the event that a service involving Radioactivity Well Surveying is one of a combination of several different services conducted by Company for the same customer on the same setup, at the same well and for a single price which is different from the total of the individual charges customarily made by Company for such services if performed separately, the

"gross charge" for determining the royalty payable on such service involving Radioactivity Well Surveying shall be that proportion of the single price charged for said combined service which the individual charge customarily made by Company for the particular service involving Radioactivity Well Surveying is of the total of the individual charges made by Company for each of such services if performed separately. For the purposes of this Section 3.03, a Radioactivity Tracer Logging Service shall be construed as "on the same setup" and "at the same well" even though successive setups or a plurality of wells are actually employed in rendering such a service.

3.04 On or before the 20th day of each month, Company shall furnish WSI with a report in writing setting forth the following information pertaining to each Radioactivity Well Survey performed by Company during the preceding calendar month:

[835]

(a) Customer;

(b) Invoice Number;

(c) Date of Invoice;

(d) Amount on which royalty is payable;

and a summary including:

(e) Total, for all well surveys, of amounts specified in Item (d) above;

(f) Total royalty payable (Item (e) multiplied by royalty rate).

Each such statement shall be accompanied with payment for the full amount of the total royalty payable for the month in question.

3.05 Company shall fix charges for surveying operations conducted hereunder in its sole discretion but agrees that royalty payable hereunder shall not be less than (a) the amount which would be payable provided such charges were commensurate with the cost and value of said operations, or (b) the amount which would be payable upon its published charges for such services, whichever is greater.

3.06 Company shall keep records adequate to verify the reports and payments made pursuant to Section 3.04, and WSI shall have access during regular business hours to Company's records to the extent and only to the extent necessary to verify said reports and payments.

[836]

IV.

Termination

4.01 If Company shall neglect or fail to render reports and make payments as and when due hereunder or shall otherwise be in default of any obligation under this Agreement, WSI shall have the right to give written notice thereof to Company, and if within sixty (60) days from and after the date of such notice Company shall not have cured such default, then WSI may, at its option, cause this Agreement to terminate forthwith by giving written notice to that effect to Company.

4.02 Company may terminate this Agreement as of the fifth anniversary date hereof or as of any successive anniversary date thereafter by giving WSI written notice of cancellation at least sixty (60) days prior to the anniversary date on which cancellation is to take effect.

4.03 Unless otherwise terminated pursuant to the provisions hereof, this Agreement shall continue in full force and effect until the expiration date of the last patent to expire under which Company is granted immunity by this Agreement.

4.04 Termination of this Agreement shall not affect the obligations of Company to make any payments which shall have accrued up to the date of such termination, and the fact that WSI shall not have terminated this Agreement pursuant to Section 4.01 because of one or more defaults by Company shall not prejudice the right of WSI to effect termination for a continuing or subsequent default.

[837]

V.

Miscellaneous

5.01 Company shall not be estopped to contest the validity of any patent included in Patent Rights of WSI.

5.02 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, and Company may assign the rights and privileges herein granted to the successors in ownership of substantially all of its Radioactivity Well Surveying business, provided any such successors shall subscribe to the terms and conditions herein, but this Agreement shall not be otherwise assignable by Company without the written consent of WSI.

5.03 The address of the parties hereto, for the purposes of notices, payments and other communication provided for herein, shall be as follows:

WELL SURVEYS, INC.
P. O. Box ~~1799~~ 589
Houston 1, Texas

Luling Perforators, Inc.
P. O. Box 951
Luling, Texas

[838]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their proper officers duly authorized and their corporate seals to be affixed as of the date first named herein.

WELL SURVEYS, INC.
/s/ By JAY G. Beaver
Vice President

ATTEST:
/s/
Secretary
(Seal)

Luling Perforators, Inc.
By /s/
President

ATTEST:
/s/
Secretary & VP

[839]

IMMUNITY AGREEMENT

THIS AGREEMENT is effective the 1st day of July, 1964 by and between DRESSER INDUSTRIES, INC. of Houston, Texas, a corporation of Delaware, hereinafter called "DII", and Maroney Elec. Well Service, Inc., a corporation of Texas, hereinafter called "Company".

I.

Recitals and Definitions

1.01 DII is possessed of certain patents and rights with respect to patents in the Field of Radioactivity Well Surveying, and Company desires the right to conduct Radioactivity Well Surveying operations for hire with immunity from liability for infringement of the "Patent Rights of DII", as hereinafter defined.

1.02 The term "Radioactivity Well Surveying", as used herein, shall mean logging or surveying bore holes by the detection along a bore hole of neutral particles, charged particles or electromagnetic radiations coming either from the nucleus or from the outer particles of the atom or any other radioactive effects of radioactive radiations or combinations thereof emanating from the material within or traversed by the bore hole, whether these emanations represent a natural condition or result from irradiating the formation with neutral particles, charged particles or electromagnetic radiations or any combination of them or are the result of a treatment of the formation or the bore hole capable of giving rise to such emanations, and by the utilization of

these received radiations or particles to derive information concerning the nature or contents of the formation or the bore

[840]

hole. The term "electromagnetic radiations" as used herein shall mean radiations having frequencies greater than that of ultraviolet light.

1.03 The term "Field of Radioactivity Well Surveying" as used herein shall mean all methods and apparatus used for Radioactivity Well Surveying.

1.04 The term "Radioactivity Survey" as used herein shall mean and include any logging and surveying operation in the Field of Radioactivity Well Surveying.

1.05 The term "Radioactivity Tracer Logging Service" shall mean either of the following: (a) a well logging service in which a radioactive tracer material is introduced into a single well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are subsequently conducted in said well to obtain information regarding the effect of said tracer material; or (b) a well logging service wherein a radioactive tracer material is introduced into a control well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are conducted in one or more adjacent wells for the purpose of obtaining information regarding transmission of said tracer material from said control well to said adjacent wells.

1.06 The term "Patents Rights of DII" as used herein shall mean the following patents:

Swift Patent No. 2,554,844

Peterson Patent No. 2,967,994

[841]

II.

Grants

2.01 DII, warranting that it has the right to do so, hereby grants to Company, upon the terms and conditions hereinafter stated, a non-exclusive, non-transferable (except as hereinafter specified) immunity from any claim, suit or liability for infringement of Patent Rights of DII arising from Radioactivity Well Surveying conducted by Company for others for hire during the term of this Agreement. Experimentation by Company in the Field of Radioactivity Well Surveying of a purely research or development nature without consideration of any kind flowing to Company from another shall be subject to immunity hereunder but shall not give rise to a claim for royalty.

2.02 Company shall have the right to extend to each of its customers with each Radioactivity Well Surveying operation conducted by Company the immunities granted under Section 2.01 under Patent Rights of DII, such immunities being specifically restricted to the specific survey upon which royalty is paid under the provisions of Section 3.02.

2.03 Since the Radioactivity Well Surveying described in Section 2.01 requires the use of instruments, the immunities therein granted shall include the right in Company to make instruments for its own use and may be extended by Company to instrument manufacturers, provided Company shall advise DII by notice in writing of any such extension, including the name and address of each instrument manufacturer to which extension has been made, and provided any such extension

shall be specifically restricted to such instruments made for and actually used by Company pursuant to the terms and conditions of this Agreement and shall cease to exist if this Agreement is terminated

[842]

or if the instrument is transferred to a stranger of this Agreement except in the event such transferee has a license or immunity under Patent Rights of DII to use such instrument, in which event the instrument shall be considered as having been made for such transferee.

III.

Payments

3.01 Company agrees to pay DII cash consideration in the sum of not applicable upon execution and delivery of this Agreement as liquidated damages for past infringement of the DII patent rights.

3.02 Company agrees to pay DII as royalty on each Radioactivity Well Surveying operation conducted by Company, which, if unlicensed, would infringe the Patent Rights of DII during the term of this agreement an amount equal to five per cent (5%) of the gross charge (exclusive of mileage) made for the survey so conducted or a sum of ten dollars ($10,00), whichever is the greater.

3.03 In the event that a service involving Radioactivity Well Surveying is one of a combination of several different services conducted by Company for the same customer on the same setup, at the same well and for a single price which is different from the total of the individual charges customarily made by Company for such services if performed separately, the "gross charge" for determining the royalty payable on such

service involving Radioactivity Well Surveying shall be that proportion of the single price charged for said combined service which the individual charge customarily made by Company for the particular service involving Radioactivity

[843]

Well Surveying is of the total of the individual charges made by Company for each of such services if performed separately. For the purposes of this Section 3.03, a Radioactivity Tracer Logging Service shall be construed as "on the same setup" and "at the same well" even though successive setups or a plurality of wells are actually employed in rendering such a service.

3.04 On or before the 20th day of each month, Company shall furnish DII with a report in writing setting forth the following information pertaining to each Radioactivity Well Survey performed by Company during the preceding calendar month:

(a) Customer;

(b) Invoice number;

(c) Date of invoice;

(d) Amount on which royalty is payable;

and a summary including:

(e) Total for all well surveys, of amounts specified in Item (d) above;

(f) Total royalty payable (Item (e) multiplied by royalty rate).

Each such statement shall be accompanied with payment for the full amount of the total royalty payable for the month in question.

3.05 Company shall fix charges for surveying operations conducted hereunder in its sole discretion but

agrees that royalty payable hereunder shall not be less than (a) the amount which would be payable provided such charges were commensurate with the cost and value of said operations, or (b) the amount which would be payable upon its published charges for such services, whichever is greater.

[844]

3.06 Company shall keep records adequate to verify the reports and payments made pursuant to Section 3.04, and DII shall have access during regular business hours to Company's records to the extent and only to the extent necessary to verify said reports and payments.

IV.

Termination

4.01 If Company shall neglect or fail to render reports and make payments as and when due hereunder or shall otherwise be in default of any obligation under this Agreement, DII shall have the right to give written notice thereof to Company, and if within sixty (60) days from and after the date of such notice Company shall not have cured such default, then DII may, at its option, cause this Agreement to terminate forthwith by giving written notice to that effect to Company.

4.02 Company may terminate this Agreement as of the fifth anniversary date hereof or as of any successive anniversary date thereafter by giving DII written notice of cancellation at least sixty (60) days prior to the anniversary date on which cancellation is to take effect.

4.03 Unless otherwise terminated pursuant to the provisions hereof, this Agreement shall continue in full force and effect until the expiration date of the last

patent to expire under which Company is granted immunity by this Agreement.

4.04 Termination of this Agreement shall not affect the obligations of Company to make any payments which shall have accrued up to the date of such termination, and the fact that DII shall not have terminated this Agreement pursuant to Section 4.01 because of one or more defaults by Company shall not prejudice the right of DII to effect termination for a continuing or subsequent default.

[845]

V.

Miscellaneous

5.01 Company shall not be estopped to contest the validity of any patent included in Patent Rights of DDI.

5.02 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, and Company may assign the rights and privileges herein granted to the successors in ownership of substantially all of its Radioactivity Well Surveying business, provided any such successors shall subscribe to the terms and conditions herein, but this Agreement shall not be otherwise assignable by Company without the written consent of DII.

5.03 The address of the parties hereto, for the purposes of notices, payments and other communication provided for herein, shall be as follows:

DRESSER INDUSTRIES, INC.
P. O. Box 589
Houston, Texas 77001

Maroney Electrical Well Service, Inc.
P. O. Box 44
Markham, Texas

[846]

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument and affixed their seals as of the date first named herein.

DRESSER INDUSTRIES, INC.
By Jay G. Beaver
Manager of Patent Licensing

ATTEST:
/s/
Assistant Secretary

MARONEY ELECTRICAL WELL SERVICE, INC.
By Harold W. Maroney
President

ATTEST:
/s/
Secretary

[847]

IMMUNITY AGREEMENT

THIS AGREEMENT is effective the 1st day of August, 1964 by and between DRESSER INDUSTRIES, INC. of Houston, Texas, a corporation of Delaware, hereinafter called "DII", and Petroleum Surveys Corporation, a corporation of West Virginia, hereinafter called "Company".

I.

Recitals and Definitions

1.01 DII is possessed of certain patents and rights with respect to patents in the Field of Radioactivity Well Surveying, and Company desires the right to conduct Radioactivity Well Surveying operations for

hire with immunity from liability for infringement of the "Patent Rights of DII", as hereinafter defined.

1.02 The term "Radioactivity Well Surveying", as used herein, shall mean logging or surveying bore holes by the detection along a bore hole of neutral particles, charged particles or electromagnetic radiations coming either from the nucleus or from the outher particles of the atom or any other radioactive effects of radioactive radiations or combinations thereof emanating from the material within or traversed by the bore hole, whether these emanations represent a natural condition or result from irradiating the formation with neutral particles, charged particles or electromagnetic radiations or any combination of them or are the result of a treatment of the formation or the bore hole capable of giving rise to such emanations, and by the utilization of these received radiations or particles to derive information concerning the nature or contents of the formation or the bore

[848]

hole. The term "electromagnetic radiations" as used herein shall mean radiations having frequencies greater than that of ultraviolet light.

1.03 The term "Field of Radioactivity Well Surveying" as used herein shall mean all methods and apparatus used for Radioactivity Well Surveying.

1.04 The term "Radioactivity Survey" as used herein shall mean and include any logging and surveying operation in the Field of Radioactivity Well Surveying.

1.05 The term "Radioactivity Tracer Logging Service" shall mean either of the following: (a) a well logging service in which a radioactive tracer material is

introduced into a single well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are subsequently conducted in said well to obtain information regarding the effect of said tracer material; or (b) a well logging service wherein a radioactive tracer material is introduced into a control well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are conducted in one or more adjacent wells for the purpose of obtaining information regarding transmission of said tracer material from said control well to said adjacent wells.

1.06 The term "Patents Rights of DII" as used herein shall mean the following patents:

Swift - 2,554,844
Peterson - 2,967,994

[849]

II.

Grants

2.01 DII, warranting that it has the right to do so, hereby grants to Company, upon the terms and conditions hereinafter stated, a non-exclusive, non-transferable (except as hereinafter specified) immunity from any claim, suit or liability for infringement of Patent Rights of DII arising from Radioactivity Well Surveying conducted by Company for others for hire during the term of this Agreement. Experimentation by Company in the Field of Radioactivity Well Surveying of a purely research or development nature without consideration of any kind flowing to Company from

another shall be subject to immunity hereunder but shall not give rise to a claim for royalty.

2.02 Company shall have the right to extend to each of its customers with each Radioactivity Well Surveying operation conducted by Company the immunities granted under Section 2.01 under Patent Rights of DII, such immunities being specifically restricted to the specific survey upon which royalty is paid under the provisions of Section 3.02.

2.03 Since the Radioactivity Well Surveying described in Section 2.01 requires the use of instruments, the immunities therein granted shall include the right in Company to make instruments for its own use and may be extended by Company to instrument manufacturers, provided Company shall advise DII by notice in writing of any such extension, including the name and address of each instrument manufacturer to which extension has been made, and provided any such extension shall be specifically restricted to such instruments made for and actually used by Company pursuant to the terms and conditions of this Agreement and shall cease to exist if this Agreement is terminated

[850]

or if the instrument is transferred to a stranger of this Agreement except in the event such transferee has a license or immunity under Patent Rights of DII to use such instrument, in which event the instrument shall be considered as having been made for such transferee.

III.

Payments

3.01 Company agrees to pay DII cash consideration in the sum of Thirty and 00/100 ($30.00) upon

execution and delivery of this Agreement as liquidated damages for past infringement of the DII patent rights.

3.02 Company agrees to pay DII as royalty on each Radioactivity Well Surveying operation conducted by Company, which, if unlicensed, would infringe the Patent Rights of DII during the term of this agreement an amount equal to five per cent (5%) of the gross charge (exclusive of mileage) made for the survey so conducted or a sum of ten dollars ($10.00), whichever is the greater.

3.03 In the event that a service involving Radioactivity Well Surveying is one of a combination of several different services conducted by Company for the same customer on the same setup, at the same well and for a single price which is different from the total of the individual charges customarily made by Company for such services if performed separately, the "gross charge" for determining the royalty payable on such service involving Radioactivity Well Surveying shall be that proportion of the single price charged for said combined service which the individual charge customarily made by Company for the particular service involving Radioactivity

[851]

Well Surveying is of the total of the individual charges made by Company for each of such services if performed separately. For the purposes of this Section 3.03, a Radioactivity Tracer Logging Service shall be construed as "on the same setup" and "at the same well" even though successive setups or a plurality of wells are actually employed in rendering such a service.

3.04 On or before the 20th day of each month, Company shall furnish DII with a report in writing setting forth the following information pertaining to each Radioactivity Well Survey performed by Company during the preceding calendar month:

(a) Customer;

(b) Invoice number;

(c) Date of invoice;

(d) Amount on which royalty is payable;

and a summary including:

(e) Total, for all well surveys, of amounts specified in Item (d) above;

(f) Total royalty payable (Item (e) multiplied by royalty rate).

Each such statement shall be accompanied with payment for the full amount of the total royalty payable for the month in question.

3.05 Company shall fix charges for surveying operations conducted hereunder in its sole discretion but agrees that royalty payable hereunder shall not be less than (a) the amount which would be payable provided such charges were commensurate with the cost and value of said operations, or (b) the amount which would be payable upon its published charges for such services, whichever is greater.

[852]

3.06 Company shall keep records adequate to verify the reports and payments made pursuant to Section 3.04, and DII shall have access during regular business hours to Company's records to the extent and only to the extent necessary to verify said reports and payments.

IV.

Termination.

4.01 If Company shall neglect or fail to render reports and make payments as and when due hereunder or shall otherwise be in default of any obligation under this Agreement, DII shall have the right to give written notice thereof to Company, and if within sixty (60) days from and after the date of such notice Company shall not have cured such default, then DII may, at its option, cause this Agreement to terminate forthwith by giving written notice to that effect to Company.

4.02 Company may terminate this Agreement as of the fifth anniversary date hereof or as of any successive anniversary date thereafter by giving DII written notice of cancellation at least sixty (60) days prior to the anniversary date on which cancellation is to take effect.

4.03 Unless otherwise terminated pursuant to the provisions hereof, this Agreement shall continue in full force and effect until the expiration date of the last patent to expire under which Company is granted immunity by this Agreement.

4.04 Termination of this Agreement shall not affect the obligations of Company to make any payments which shall have accrued up to the date of such termination, and the fact that DII shall not have terminated this Agreement pursuant to Section 4.01 because of one or more defaults by Company shall not prejudice the right of DII to effect termination for a continuing or subsequent default.

[853]

V.

Miscellaneous

5.01 Company shall not be estopped to contest the validity of any patent included in Patent Rights of DII.

5.02 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, and Company may assign the rights and privileges herein granted to the successors in ownership of substantially all of its Radioactivity Well Surveying business, provided any such successors shall subscribe to the terms and conditions herein, but this Agreement shall not be otherwise assignable by Company without the written consent of DII.

5.03 The address of the parties hereto, for the purposes of notices, payments and other communication provided for herein, shall be as follows:

DRESSER INDUSTRIES, INC.
P. O. Box 589
Houston, Texas 77001

PETROLEUM SURVEYS
CORPORATION
P. O. Box 536
Ceredo, West Virginia

[854]

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument and affixed their seals as of the date first named herein.

DRESSER INDUSTRIES, INC.
By Jay G. Beaver
Manager of Patent Licensing

ATTEST:
/s/ .....
Assistant Secretary

PETROLEUM SURVEYS
CORPORATION
By Earl C. Bevins
President

ATTEST:

.....
Secretary

[855]

IMMUNITY AGREEMENT

THIS AGREEMENT is effective the First day of October, 1964 by and between DRESSER INDUSTRIES, INC. of Houston, Texas, a corporation of Delaware, hereinafter called "DII", and SHELWELL SERVICES, INC., a corporation of Ohio, hereinafter called "Company".

I.

Recitals and Definitions

1.01 DII is possessed of certain patents and rights with respect to patents in the Field of Radioactivity Well Surveying, and Company desires the right to conduct Radioactivity Well Surveying operations for hire with immunity from liability for infringement of the "Patent Rights of DII", as hereinafter defined.

1.02 The term "Radioactivity Well Surveying", as used herein, shall mean logging or surveying bore holes

by the detection along a bore hole of neutral particles, charged particles or electromagnetic radiations coming either from the nucleus or from the outer particles of the atom or any other radioactive effects of radioactive radiations or combinations thereof emanating from the material within or traversed by the bore hole, whether these emanations represent a natural condition or result from irradiating the formation with neutral particles, charged particles or electromagnetic radiations or any combination of them or are the result of a treatment of the formation or the bore hole capable of giving rise to such emanations, and by the utilization of these received radiations or particles to derive information concerning the nature or contents of the formation or the bore

[856]

hole. The term "electromagnetic radiations" as used herein shall mean radiations having frequencies greater than that of ultraviolet light.

1.03 The term "Field of Radioactivity Well Surveying" as used herein shall mean all methods and apparatus used for Radioactivity Well Surveying.

1.04 The term "Radioactivity Survey" as used herein shall mean and include any logging and surveying operation in the Field of Radioactivity Well Surveying.

1.05 The term "Radioactivity Tracer Logging Service" shall mean either of the following: (a) a well logging service in which a radioactive tracer material is introduced into a single well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are subsequently conducted in said well to obtain informa-

tion regarding the effect of said tracer material; or (b) a well logging service wherein a radioactive tracer material is introduced into a control well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are conducted in one or more adjacent wells for the purpose of obtaining information regarding transmission of said tracer material from said control well to said adjacent wells.

1.06 The term "Patents' Rights of DII" as used herein shall mean the following patents:

Swift - 2,554,844

Peterson - 2,967,994

[857]

II.

Grants

2.01 DII, warranting that it has the right to do so, hereby grants to Company, upon the terms and conditions hereinafter stated, a non-exclusive, non-transferable (except as hereinafter specified) immunity from any claim, suit or liability for infringement of Patent Rights of DII arising from Radioactivity Well Surveying conducted by Company for others for hire during the term of this Agreement. Experimentation by Company in the Field of Radioactivity Well Surveying of a purely research or development nature without consideration of any kind flowing to Company from another shall be subject to immunity hereunder but shall not give rise to a claim for royalty.

2.02 Company shall have the right to extend to each of its customers with each Radioactivity Well Surveying

operation conducted by Company the immunites granted under Section 2.01 under Patent Rights of DII, such immunities being specifically restricted to the specific survey upon which royalty is paid under the provisions of Section 3.02.

2.03 Since the Radioactivity Well Surveying described in Section 2.01 requires the use of instruments, the immunities therein granted shall include the right in Company to make instruments for its own use and may be extended by Company to instrument manufacturers, provided Company shall advise DII by notice in writing of any such extension, including the name and address of each instrument manufacturer to which extension has been made, and provided any such extension shall be specifically restricted to such instruments made for and actually used by Company pursuant to the terms and conditions of this Agreement and shall cease to exist if this Agreement is terminated

[858]

or if the instrument is transferred to a stranger of this Agreement except in the event such transferee has a license or immunity under Patent Rights of DII to use such instrument, in which event the instrument shall be considered as having been made for such transferee.

III.

Payments

3.01 Company agrees to pay DII cash consideration in the sum of Ninety Dollars & [cents illegible] upon execution and delivery of this Agreement as liquidated damages for past infringement of the DII patent rights.

3.02 Company agrees to pay DII as royalty on each Radioactivity Well Surveying operation conducted by

Company, which, if unlicensed, would infringe the Patent Rights of DII during the term of this agreement an amount equal to five per cent (5%) of the gross charge (exclusive of mileage) made for the survey so conducted or a sum of ten dollars ($10.00) whichever is the greater.

3.03 In the event that a service involving Radioactivity Well Surveying is one of a combination of several different services conducted by Company for the same customer on the same setup, at the same well and for a single price which is different from the total of the individual charges customarily made by Company for such services if performed separately, the "gross charge" for determining the royalty payable on such service involving Radioactivity Well Surveying shall be that proportion of the single price charged for said combined service which the individual charge customarily made by Company for the particular service involving Radioactivity

[859]

Well Surveying is of the total of the individual charges made by Company for each of such services if performed separately. For the purposes of this Section 3.03, a Radioactivity Tracer Logging Service shall be construed as "on the same setup" and "at the same well" even though successive setups or a plurality of wells are actually employed in rendering such a service.

3.04 On or before the 20th day of each month, Company shall furnish DII with a report in writing setting forth the following information pertaining to each Radioactivity Well Survey performed by Company during the preceding calendar month:

(a) Customer;

(b) Invoice number;

(c) Date of invoice;

(d) Amount on which royalty is payable;

and a summary including:

(e) Total, for all well surveys, of amounts specified in Item (d) above;

(f) Total royalty payable (Item (e) multiplied by royalty rate).

Each such statement shall be accompanied with payment for the full amount of the total royalty payable for the month in question.

3.05 Company shall fix charges for surveying operations conducted hereunder in its sole discretion but agrees royalty payable hereunder shall not be less than (a) the amount which would be payable provided such charges were commensurate with the cost and value of said operations, or (b) the amount which would be payable upon its published charges for such services, whichever is greater.

[860]

3.06 Company shall keep records adequate to verify the reports and payments made pursuant to Section 3.04, and DII shall have access during regular business hours to Company's records to the extent and only to the extent necessary to verify said reports and payments.

IV.

Termination

4.01 If Company shall neglect or fail to render reports and make payments as and when due hereunder or shall otherwise be in default of any obligation under this Agreement, DII, shall have the right to give written

notice thereof to Company, and if within sixty (60) days from and after the date of such notice Company shall not have cured such default then DII may, at its option, cause this Agreement to terminate forthwith by giving written notice to that effect to Company.

4.02 Company may terminate this Agreement as of the fifth anniversary date hereof or as of any successive anniversary date hereafter by giving DII written notice of cancellation at least sixty (60) days prior to the anniversary date on which cancellation is to take effect.

4.03 Unless otherwise terminated pursuant to the provisions hereof, this Agreement shall continue in full force and effect until the expiration date of the last patent to expire under which Company is granted immunity by this Agreement.

4.04 Termination of this Agreement shall not affect the obligations of Company to make any payments which shall have accrued up to the date of such termination, and the fact that DII shall not have terminated this Agreement pursuant to Section 4.01 because of one or more defaults by Company shall not prejudice the right of DII to effect termination for a continuing or subsequent default.

[861]

V.

Miscellaneous

5.01 Company shall not be estopped to contest the validity of any patent included in Patent Rights of DII.

5.02 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, and Company may assign the rights and

privileges herein granted to the successors in ownership of substantially all of its Radioactivity Well Surveying business, provided any such successors shall subscribe to the terms and conditions herein, but this Agreement shall not be otherwise assignable by Company without the written consent of DII.

5.03 The address of the parties hereto, for the purposes of notices, payments and other communication provided for herein, shall be as follows:

DRESSER INDUSTRIES, INC.
P. O. Box 589
Houston, Texas 77001

SHELWELL SERVICES, INC.
R.F.D. 3—1100 London Road
Delaware, Ohio

[862]

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument and affixed their seals as of the date first named herein.

DRESSER INDUSTRIES, INC.
By Jay G. Beaver
Manager of Patent Licensing

ATTEST:
/s/ .....
Assistant Secretary

SHELWELL SERVICES, INC.
By Clyde Shelton
President

ATTEST:
Norma Shelton
Secretary

[1379]

IMMUNITY AGREEMENT

THIS AGREEMENT is effective the 1st day of January, 1965 by and between DRESSER INDUSTRIES, INC. of Houston, Texas, a corporation of Delaware, hereinafter called "DII", and Rector Oil Well Services, Inc., a corporation of Illinois, hereinafter called "Company".

I.

Recitals and Definitions

1.01 DII is possessed of certain patents and rights with respect to patents in the Field of Radioactivity Well Surveying, and Company desires the right to conduct Radioactivity Well Surveying operations for hire with immunity from liability for infringement of the "Patent Rights of DII", as hereinafter defined.

1.02 The term "Radioactivity Well Surveying", as used herein, shall mean logging or surveying bore holes by the detection along a bore hole of neutral particles, charged particles or electromagnetic radiations coming either from the nucleus or from the outer particles of atom or any other radioactive effects of radioactive radiations or combinations thereof emanating from the material within or traversed by the bore hole, whether these emanations represent a natural condition or result from irradiating the formation with neutral particles, charged particles or electromagnetic radiations or any combination of them or are the result of a treatment of the formation or the bore hole capable of giving rise to such emanations, and by the utilization of these received radiations or particles to derive information concerning the nature or contents of the formation or the bore

[1380]

hole. The term "electromagnetic radiations" as used herein shall mean radiations having frequencies greater than that of ultraviolet light.

1.03 The term "Field of Radioactivity Well Surveying" as used herein shall mean all methods and apparatus used for Radioactivity Well Surveying.

1.04 The term "Radioactivity Survey" as used herein shall mean and include any logging and surveying operation in the Field of Radioactivity Well Surveying.

1.05 The term "Radioactivity Tracer Logging Service" shall mean either of the following: (a) a well logging service in which a radioactive tracer material is introduced into a single well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are subsequently conducted in said well to obtain information regarding the effect of said tracer material; or (b) a well logging service wherein a radioactive tracer material is introduced into a control well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are conducted in one or more adjacent wells for the purpose of obtaining information regarding transmission of said tracer material from said control well to said adjacent wells.

1.06 The term "Patents Rights of DII" as used herein shall mean the following patents:

Swift No. 2,554,844
Peterson No. 2,967,994
Mardock No. 2,810,076

[1381]

II.

Grants

2.01 DII, warranting that it has the right to do so, hereby grants to Company, upon the terms and conditions hereinafter stated, a non-exclusive, non-transferable (except as hereinafter specified) immunity from any claim, suit or liability for infringement of Patent Rights of DII arising from Radioactivity Well Surveying conducted by Company for others for hire during the term of this Agreement. Experimentation by Company in the Field of Radioactivity Well Surveying of a purely research or development nature without consideration of any kind flowing to Company from another shall be subject to immunity hereunder but shall not give rise to a claim for royalty.

2.02 Company shall have the right to extend to each of its customers with each Radioactivity Well Surveying operation conducted by Company the immunities granted under Section 2.01 under Patent Rights of DII, such immunities being specifically restricted to the specific survey upon which royalty is paid under the provisions of Section 3.02.

2.03 Since the Radioactivity Well Surveying described in Section 2.01 requires the use of instruments, the immunities therein granted shall include the right in Company to make instruments for its own use and may be extended by Company to instrument manufacturers, provided Company shall advise DII by notice in writing of any such extension, including the name and address of each instrument manufacturer to which extension has been made, and provided any such extension shall

be specifically restricted to such instruments made for and actually used by Company pursuant to the terms and conditions of this Agreement and shall cease to exist if this Agreement is terminated

[1382]

or if the instrument is transferred to a stranger of this Agreement except in the event such transferee has a license or immunity under Patent Rights of DII to use such instrument, in which event the instrument shall be considered as having been made for such transferee.

III.

Payments

3.01 Company agrees to pay DII cash consideration in the sum of $500.00 upon execution and delivery of this Agreement as liquidated damages for past infringement of the DII patent rights.

3.02 Company agrees to pay DII as royalty on each Radioactivity Well Surveying operation conducted by Company, which, if unlicensed, would infringe the Patent Rights of DII during the term of this agreement an amount equal to five per cent (5%) of the gross charge (exclusive of mileage) made for the survey so conducted or a sum of ten dollars ($10.00), whichever is the greater.

3.03 In the event that a service involving Radioactivity Well Surveying is one of a combination of several different services conducted by Company for the same customer on the same setup, at the same well and for a single price which is different from the total of the individual charges customarily made by Company for such services if performed separately, the "gross

charge" for determining the royalty payable on such service involving Radioactivity Well Surveying shall be that proportion of the single price charged for said combined service which the individual charge customarily made by Company for the particular service involving Radioactivity

[1383]

Well Surveying is of the total of the individual charges made by Company for each of such services if performed separately. For the purposes of this Section 3.03, a Radioactivity Tracer Logging Service shall be construed as "on the same setup" and "at the same well" even though successive setups or a plurality of wells are actually employed in rendering such a service.

3.04 On or before the 20th day of each month, Company shall furnish DII with a report in writing setting forth the following information pertaining to each Radioactivity Well Survey performed by Company during the preceding calendar month:

(a) Customer;

(b) Invoice number;

(c) Date of invoice;

(d) Amount on which royalty is payable;

and a summary including:

(e) Total, for all well surveys, of amounts specified in Item (d) above;

(f) Total royalty payable (Item (e) multiplied by royalty rate).

Each such statement shall be accompanied with payment for the full amount of the total royalty payable for the month in question.

3.05 Company shall fix charges for surveying operations conducted hereunder in its sole discretion but agrees that royalty payable hereunder shall not be less than (a) the amount which would be payable provided such charges were commensurate with the cost and value of said operations, or (b) the amount which would be payable upon its published charges for such services, whichever is greater.

[1384]

3.06 Company shall keep records adequate to verify the reports and payments made pursuant to Section 3.04, and DII shall have access during regular business hours to Company's records to the extent and only to the extent necessary to verify said reports and payments.

IV.

Termination

4.01 If Company shall neglect or fail to render reports and make payments as and when due hereunder or shall otherwise be in default of any obligation under this Agreement, DII shall have the right to give written notice thereof to Company, and if within sixty (60) days from and after the date of such notice Company shall not have cured such default, then DII may, at its option, cause this Agreement to terminate forthwith by giving written notice to that effect to Company.

4.02 Company may terminate this Agreement as of the fifth anniversary date hereof or as of any successive anniversary date thereafter by giving DII written notice of cancellation at least sixty (60) days prior to the anniversary date on which cancellation is to take effect.

4.03 Unless otherwise terminated pursuant to the provisions hereof, this Agreement shall continue in full force and effect until the expiration date of the last patent to expire under which Company is granted immunity by this Agreement.

4.04 Termination of this Agreement shall not affect the obligations of Company to make any payments which shall have accrued up to the date of such termination, and the fact that DII shall have terminated this Agreement pursuant to Section 4.01 because of one or more defaults by Company shall not prejudice the right of DII to effect termination for a continuing or subsequent default.

[1385]

V.

Miscellaneous

5.01 Company shall not be estopped to contest the validity of any patent included in Patent Rights of DII.

5.02 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, and Company may assign the rights and privileges herein granted to the successors in ownership of substantially all of its Radioactivity Well Surveying business, provided any such successors shall subscribe to the terms and conditions herein, but this Agreement shall not be otherwise assignable by Company without the written consent of DII.

5.03 The address of the parties hereto, for the purposes of notices, payments and other communication provided for herein, shall be as follows:

DRESSER INDUSTRIES, INC.
P. O. Box 589
Houston, Texas 77001

RECTOR OIL WELL SERVICES, INC.
502 East Main
Carmi, Illinois

[1386]

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument and affixed their seals as of the date first named herein.

DRESSER INDUSTRIES, INC.
By Jay G. Beaver
Manager of Patent Licensing

ATTEST:
/s/ .....
Assistant Secretary

RECTOR OIL WELL SERVICES, INC.
By George W. Rector
President

ATTEST:
Winifred A. Rector
Secretary

[1392]

IMMUNITY AGREEMENT

THIS AGREEMENT is effective the 1st day of January, 1965 by and between DRESSER INDUSTRIES, INC. of Houston, Texas, a corporation of Delaware, hereinafter called "DII", and Texas Perforating Company of Gainesville, a corporation of Texas hereinafter called "Company".

I.

Recitals and Definitions

1.01 DII is possessed of certain patents and rights with respect to patents in the Field of Radioactivity Well Surveying, and Company desires the right to conduct Radioactivity Well Surveying operations for hire with immunity from liability for infringement of the "Patent Rights of DII", as hereinafter defined.

1.02 The term "Radioactivity Well Surveying", as used herein, shall mean logging or surveying bore holes by the detection along a bore hole of neutral particles, charged particles or electromagnetic radiations coming either from the nucleus or from the outer particles of the atom or any other radioactive effects of radioactive radiations or combinations thereof emanating from the material within or traversed by the bore hole, whether these emanations represent a natural condition or result from irradiating the formation with neutral particles, charged particles or electromagnetic radiations or any combination of them or are the result of a treatment of the formation or the bore hole capable of giving rise to such emanations, and by the utilization of these received radiations or particles to derive information concerning the nature or contents of the formation or the bore

hole. The term "electromagnetic radiations" as used herein shall mean radiations having frequencies greater than that of ultraviolet light.

1.03 The term "Field of Radioactivity Well Surveying" as used herein shall mean all methods and apparatus used for Radioactivity Well Surveying.

1.04 The term "Radioactivity Survey" as used herein shall mean and include any logging and surveying operation in the Field of Radioactivity Well Surveying.

1.05 The term "Radioactivity Tracer Logging Service" shall mean either of the following: (a) a well logging service in which a radioactive tracer material is introduced into a single well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are subsequently conducted in said well to obtain information regarding the effect of said tracer material; or (b) a well logging service wherein a radioactive tracer material is introduced into a control well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are conducted in one or more adjacent wells for the purpose of obtaining information regarding transmission of said tracer material from said control well to said adjacent wells.

1.06 The term "Patents Rights of DII" as used herein shall mean the following patents:

Swift Patent No. 2,554,844
Mardock Patent No. 2,810,076
Peterson Patent No. 2,967,994

[1394]

II.

Grants

2.01 DII, warranting that it has the right to do so, hereby grants to Company, upon the terms and conditions hereinafter stated, a non-exclusive, non-transferable (except as hereinafter specified) immunity from any claim, suit or liability for infringement of Patent Rights of DII arising from Radioactivity Well Surveying conducted by Company for others for hire during the term of this Agreement. Experimentation by Company in the Field of Radioactivity Well Surveying of a purely research or development nature without consideration of any kind flowing to Company from another shall be subject to immunity hereunder but shall not give rise to a claim for royalty.

2.02 Company shall have the right to extend to each of its customers with each Radioactivity Well Surveying operation conducted by Company the immunities granted under Section 2.01 under Patent Rights of DII, such immunities being specifically restricted to the specific survey upon which royalty is paid under the provisions of Section 3.02.

2.03 Since the Radioactivity Well Surveying described in Section 2.01 requires the use of instruments, the immunities therein granted shall include the right in Company to make instruments for its own use and may be extended by Company to instrument manufacturers, provided Company shall advise DII by notice in writing of any such extension, including the name and address of each instrument manufacturer to which extension has been made, and provided any such ex-

tension shall be specifically restricted to such instruments made for and actually used by Company pursuant to the terms and conditions of this Agreement and shall cease to exist if this Agreement is terminated

[1395]

or if the instrument is transferred to a stranger of this Agreement except in the event such transferee has a license or immunity under Patent Rights of DII to use such instrument, in which event the instrument shall be considered as having been made for such transferee.

III.

Payments

3.01 Company agrees to pay DII cash consideration in the sum of not applicable upon execution and delivery of this Agreement as liquidated damages for past infringement of the DII patent rights.

3.02 Company agrees to pay DII as royalty on each Radioactivity Well Surveying operation conducted by Company, which, if unlicensed, would infringe the Patent Rights of DII during the term of this agreement an amount equal to five per cent (5%) of the gross charge (exclusive of mileage) made for the survey so conducted or a sum of ten dollars ($10.00), whichever is the greater.

3.03 In the event that a service involving Radioactivity Well Surveying is one of a combination of several different services conducted by Company for the same customer on the same setup, at the same well and for a single price which is different from the total of the individual charges customarily made by Company for such services if performed separately, the "gross

charge" for determining the royalty payable on such service involving Radioactivity Well Surveying shall be that proportion of the single price charged for said combined service which the individual charge customarily made by Company for the particular service involving Radioactivity

[1396]

Well Surveying is of the total of the individual charges made by Company for each of such services if performed separately. For the purposes of this Section 3.03, a Radioactivity Tracer Logging Service shall be construed as "on the same setup" and "at the same well" even though sucessive setups or a plurality of wells are actually employed in rendering such a service.

3.04 On or before the 20th day of each month, Company shall furnish DII with a report in writing setting forth the following information pertaining to each Radioactivity Well Survey performed by Company during the preceding calendar month:

(a) * * * * *

(b) Invoice number;

(c) Date of invoice;

(d) Amount on which royalty is payable;

and a summary including:

(e) Total, for all well surveys, of amounts specified in Item (d) above;

(f) Total royalty payable (Item (e) multiplied by royalty rate).

Each such statement shall be accompanied with payment for the full amount of the total royalty payable for the month in question.

3.05 Company shall fix charges for surveying operations conducted hereunder in its sole discretion but agrees that royalty payable hereunder shall not be less than (a) the amount which would be payable provided such charges were commensurate with the cost and value of said operations, or (b) the amount which would be payable upon its published charges for such services, whichever is greater.

[1397]

3.06 Company shall keep records adequate to verify the reports and payments made pursuant to Section 3.04, and DII shall have access during regular business hours to Company's records to the extent and only to the extent necessary to verify said reports and payments.

IV.

Termination

4.01 If Company shall neglect or fail to render reports and make payments as and when due hereunder or shall otherwise be in default of any obligation under this Agreement, DII shall have the right to give written notice thereof to Company, and if within sixty (60) days from and after the date of such notice Company shall not have cured such default, then DII may, at its option, cause this Agreement to terminate forthwith by giving written notice to that effect to Company.

4.02 Company may terminate this Agreement as of the first anniversary date hereof or as of any successive anniversary date thereafter by giving DII written notice of cancellation at least sixty (60) days prior to the anniversary date on which cancellation is to take effect.

4.03 Unless otherwise terminated pursuant to the provisions hereof, this Agreement shall continue in full force and effect until the expiration date of the last patent to expire under which Company is granted immunity by this Agreement.

4.04 Termination of this Agreement shall not affect the obligations of Company to make any payments which shall have accrued up to the date of such termination, and the fact that DII shall not have terminated this Agreement pursuant to Section 4.01 because of one or more defaults by Company shall not prejudice the right of DII to effect termination for a continuing or subsequent default.

[1398]

V.

Mistellaneous

5.01 Company shall not be estopped to contest the validity of any patent included in Patent Rights of DII.

5.02 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, and Company may assign the rights and privileges herein granted to the successors in ownership of substantially all of its Radioactivity Well Surveying

business, provided any such successors shall subscribe to the terms and conditions herein, but this Agreement shall not be otherwise assignable by Company without the written consent of DII.

5.03 The address of the parties hereto, for the purposes of notices, payments and other communication provided for herein, shall be as follows:

DRESSER INDUSTRIES, INC.
P. O. Box 589
Houston, Texas 77001

TEXAS PERFORATING COMPANY
OF GAINESVILLE
1405 North Grand
Gainesville, Texas

[1399]

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument and affixed their seals as of the date first named herein.

DRESSER INDUSTRIES, INC.
By Jay G. Beaver
Manager of Patent Licensing

ATTEST:
/s/ .....
Assistant Secretary

TEXAS PERFORATING
COMPANY OF GAINESVILLE
By Freddy L. Simmons
President

ATTEST:

.....
Secretary

[863]

IMMUNITY AGREEMENT

THIS AGREEMENT is effective the 1st day of March, 1965 by and between DRESSER INDUSTRIES, INC. of Houston, Texas, a corporation of Delaware, hereinafter called "DII", and Titan Perforators, Inc., a corporation of Texas, hereinafter called "Company".

I.

Recitals and Definitions

1.01 DII is possessed of certain patents and rights with respect to patents in the Field of Radioactivity Well Surveying, and Company desires the right to conduct Radioactivity Well Surveying operations for hire with immunity from liability for infringement of the "Patent Rights of DII", as hereinafter defined.

1.02 The term "Radioactivity Well Surveying", as used herein, shall mean logging or surveying bore holes by the detection along a bore hole of neutral particles, charged particles or electromagnetic radiations coming either from the nucleus or from the outer particles of the atom or any other radioactive effects of radioactive radiations or combinations thereof emanating from the material within or traversed by the bore hole, whether these emanations represent a natural condition or result from irradiating the formation with neutral particles, charged particles or electromagnetic radiations or any combination of them or are the result of a treatment of the formation or the bore hole capable of giving rise to such emanations, and by the utilization of these received radiations or particles to derive informa-

tion concerning the nature or contents of the formation or the bore

[864]

hole. The term "electromagnetic radiations" as used herein shall mean radiations having frequencies greater than that of ultraviolet light.

1.03 The term "field of Radioactivity Well Surveying" as used herein shall mean all methods and apparatus used for Radioactivity Well Surveying.

1.04 The term "Radioactivity Survey" as used herein shall mean and include any logging and surveying operation in the Field of Radioactivity Well Surveying.

1.05 The term "Radioactivity Tracer Logging Service" shall mean either of the following: (a) a well logging service in which a radioactive tracer material is introduced into a single well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are subsequently conducted in said well to obtain information regarding the effect of said tracer material; or (b) a well logging service wherein a radioactive tracer material is introduced into a control well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are conducted in one or more adjacent wells for the purpose of obtaining information regarding transmission of said tracer material from said control well to said adjacent wells.

1.06 The term "Patents Rights of DII" as used herein shall mean the following patents:

Peterson Patent # 2,967,994

Swift Patent # 2,554,844

[865]

II.

Grants

2.01 DII, warranting that it has the right to do so, hereby grants to Company, upon the terms and conditions hereinafter stated, a non-exclusive, non-transferable (except as hereinafter specified) immunity from any claim, suit or liability for infringement of Patent Rights of DII arising from Radioactivity Well Surveying conducted by Company for others for hire during the term of this Agreement. Experimentation by Company in the Field of Radioactivity Well Surveying of a purely research or development nature without consideration of any kind flowing to Company from another shall be subject to immunity hereunder but shall not give rise to a claim for royalty.

2.02 Company shall have the right to extend to each of its customers with each Radioactivity Well Surveying operation conducted by Company the immunities granted under Section 2.01 under Patent Rights of DII, such immunities being specifically restricted to the specific survey upon which royalty is paid under the provisions of Section 3.02.

2.03 Since the Radioactivity Well Surveying described in Section 2.01 requires the use of instruments, the immunities therein granted shall include the right in Company to make instruments for its own use and may be extended by Company to instrument manufacturers, provided Company shall advise DII by notice in writing of any such extension, including the name and address of each instrument manufacturer to which extension has been made, and provided any such

extension shall be specifically restricted to such instruments made for and actually used by Company pursuant to the terms and conditions of this Agreement and shall cease to exist if this Agreement is terminated

[866]

or if the instrument is transferred to a stranger of this Agreement except in the event such transferee has a license or immunity under Patent Rights of DII to use such instrument, in which event the instrument shall be considered as having been made for such transferee.

III.

Payments

3.01 Company agrees to pay DII cash consideration in the sum of not applicable upon execution and delivery of this Agreement as liquidated damages for past infringement of the DII patent rights.

3.02 Company agrees to pay DII as royalty on each Radioactivity Well Surveying operation conducted by Company, which, if unlicensed, would infringe the Patent Rights of DII during the term of this agreement an amount equal to five per cent (5%) of the gross charge (exclusive of mileage) made for the survey so conducted or a sum of ten dollars ($10.00), whichever is the greater.

3.03 In the event that a service involving Radioactivity Well Surveying is one of a combination of several different services conducted by Company for the same customer on the same setup, at the same well and for a single price which is different from the total of the individual charges customarily made by Company for such services if performed separately, the "gross charge" for determining the royalty payable on such

service involving Radioactivity Well Surveying shall be that proportion of the single price charged for said combined service which the individual charge customarily made by Company for the particular service involving Radioactivity

[867]

Well Surveying is of the total of the individual charges made by Company for each of such services if performed separately. For the purposes of this Section 3.03, a Radioactivity Tracer Logging Service shall be construed as "on the same setup" and "at the same well" even though successive setups or a plurality of wells are actually employed in rendering such a service.

3.04 On or before the 20th day of each month, Company shall furnish DII with a report in writing setting forth the following information pertaining to each Radioactivity Well Survey performed by Company during the preceding calendar month:

(a) Customer;

(b) Invoice number;

(c) Date of invoice;

(d) Amount on which royalty is payable;

and a summary including:

(e) Total, for all well surveys, of amounts specified in Item (d) above;

(f) Total royalty payable (Item (e) multiplied by royalty rate).

Each such statement shall be accompanied with payment for the full amount of the total royalty payable for the month in question.

3.05 Company shall fix charges for surveying operations conducted hereunder in its sole discretion but

agrees that royalty payable hereunder shall not be less than (a) the amount which would be payable provided such charges were commensurate with the cost and value of said operations, or (b) the amount which would be payable upon its published charges for such services, whichever is greater.

[868]

3.06 Company shall keep records adequate to verify the reports and payments made pursuant to Section 3.04, and DII shall have access during regular business hours to Company's records to the extent and only to the extent necessary to verify said reports and payments.

IV.

Termination

4.01 If Company shall neglect or fail to render reports and make payments as and when due hereunder or shall otherwise be in default of any obligation under this Agreement, DII shall have the right to give written notice thereof to Company, and if within sixty (60) days from and after the date of such notice Company shall not have cured such default, then DII may, at its option, cause this Agreement to terminate forthwith by giving written notice to that effect to Company.

4.02 Company may terminate this Agreement as of the fifth anniversary date hereof or as of any successive anniversary date thereafter by giving DII written notice of cancellation at least sixty (60) days prior to the anniversary date on which cancellation is to take effect.

4.03 Unless otherwise terminated pursuant to the provisions hereof, this Agreement shall continue in full

When I had reason to believe that a company engaged in rendering wireline services was infringing the Swift Patent, or other WSI patents, it was my practice to write it a letter in the following form:

Gentlemen:

You will be interested in learning of the conclusion of litigation between Well Surveys, Inc. and McCullough Tool Company involving several important patents in the Field of Radioactivity Well Surveying. Judgment was entered March 16, 1961 by Judge Royce H. Savage in the United States District Court for the Northern District of Oklahoma. Judge Savage found several of Well Surveys' patents both valid and infringed by the operations of McCullough Tool Company.

You will be interested in reviewing the Swift Patent No. 2,554,844, which was held valid and infringed by Judge Savage. This patent covers a radioactivity well surveying system employing a casing collar locator for depth measurements. We believe you will also be interested in other patents of Well Surveys which were not involved in the suit with McCullough Tool Company including Mardock Patent No. 2,810,076 relating to radioactive tracer logging and Nordelius Patent No. 2,933,609 relating to multispaced neutron logging. You may also be interested in certain patents of Schlumberger Well Surveying Corporation under which we may grant sublicenses.

In accordance with Well Surveys' established licensing policies, as approved by Judge Savage, Well Surveys offers you a license under any or all of its patents in the Field of Radioactivity Well Surveying at a reasonable royalty rate that depends upon the patent or patents selected by you as required for your operations. It is not possible for us to foresee all of your possible requirements, but we have prepared a form of

agreement suitable for use should you desire a license under all of our patents. This form of agreement has been found suitable by other service companies. The license includes all Well Surveys patents in the Field of Radioactivity Well Surveying for which application was made prior to January 1, 1961. It also includes Schlumberger Radioactivity Well Surveying patents for which application was made prior to January 1, 1951. I am attaching a list of current patents of Well Surveys and a list of Schlumberger patents we may sublicense. We also have pending about 75 patent applications relating to Radioactivity Well Surveying.

Attached is a copy of this form of Immunity Agreement we are offering those in your position. You will note that the proposed license includes all of our patents in the defined Field of Radioactivity Well Surveying. For convenience in accounting, the royalty is based upon all operations in this defined field as provided by Section 3.02 of the proposed agreement, even though some of these operations may not be covered by any of the patents licensed. Should you wish a different royalty base, this is satisfactory to us, provided the royalty rate is appropriately adjusted.

You will note that provision is made in Section 3.01 for an advance payment. This will depend somewhat on the nature and scope of your operations, but it is normally $2,500.00.

We should also expect to settle the matter of damages for past infringement of any of our patents. This would include payment for infringement of Fearon Patent No. 2,308,361, held valid and infringed by Judge Savage, should you have been performing operations covered thereby prior to its expiration January 12, 1960.

After you have had an opportunity to consider this matter and the attached Immunity Agreement, I should like to discuss them with you. Please let me

know if I can be of help to you. I should be happy to supply copies of any of the listed patents in which you are interested.

Yours very truly,
JAY G. BEAVER,
Vice President.

The form of Immunity Agreement which I sent to each prospective licensee with the above letter was, as indicated in the fourth paragraph thereof, a license under all of the radioactivity well surveying patents which WSI owned, or under which it had licensing rights, with royalty payable regardless of what patents were used, under a clause providing as follows:

> "Company agrees to pay WSI as royalty on each well surveyed by a Radioactivity Well Survey an amount equal to six per cent (6%) of the gross charge (exclusive of mileage) made for the survey so conducted, or a sum of Ten Dollars ($10), whichever is the greater."

Prospective licensees who desired a license under all the WSI patents generally took a license in this form. Most prospective licensees, however, desired a license either under the Swift Patent alone, or under the Swift Patent and one or more other patents which the licensee selected, and such licensee generally entered into license agreements under which royalty was payable only with respect to operations which infringed one or more of the patents selected.

After sending to a prospective licensee a letter in the above form, it was my general practice to follow-up the negotiation along the lines indicated in the letter, to ascertain, if I could, what WSI patents the prospective licensee was using, and to try to persuade it to take a license thereunder.

When I first began to license the Swift Patent, I conferred with patent counsel for Dresser Industries, Inc. and its subsidiary companies, on what would be a reasonable royalty for the Swift Patent. We considered the matter of the Swift contribution to the radioactivity well surveying industry, and the breadth of coverage of the Swift Patent as determined by Judge Savage, and concluded that a reasonable royalty for the Swift Patent should be an amount equal to 5% of the gross charge (exclusive of mileage), or a sum of $10, whichever was greater, for each operation which, if unlicensed, would infringe the patent.

The first licensees to whom I suggested this royalty basis agreed to it, and after a considerable number of agreements had been made on the 5% basis, I would have been reluctant to charge a new licensee any lower rate, and it would not be fair to charge a higher rate. However, I do not recall that any prospective licensee requested that a royalty rate less than 5% be charged for the Swift Patent.

During the course of negotiations with most prospective licensees, I also mentioned the Peterson Patent, No. 2,967,994, which covered a particular form of collar locator. Under WSI's offer to grant a license under any or all of our patents, the Peterson Patent, as well as any other WSI patent, was available to any prospective licensee. Whenever a prospective radioactivity well logging licensee desired a license under the Peterson Patent, the Peterson Patent was included in his license, but not otherwise. I frequently discussed the expiration of the Swift Patent with prospective licensees, and told them that when the Swift Patent expired, there would be no further obligation to pay royalty on it. I also told them that they would then have to pay royalty on the Peterson Patent only if they used the Peterson Patent. I do not recall any case in which a prospective radioactivity well logging licensee

asked for a license under the Peterson Patent—or for that matter any of the other patents—at a royalty rate of less than 5%.

From the time I became Vice President of Well Surveys, Inc. in 1961, to the time of my resignation in 1965, about 90 companies took licenses under the Swift Patent. In many cases, the licenses covered one or more other WSI patents as well. The licensees included not only small companies, but some of the largest companies engaged in the radioactivity well surveying business. Among the large companies which became licensees were the Halliburton Company, Pan Geo Atlas Corporation, Great Lakes Carbon Corporation, The Western Company, and Seismograph Service Corporation.

During the entire period from 1961 to 1965, when I was Vice President of Well Surveys, Inc., in charge of its licensing activities, we contacted many of the prospective licensees, and some came to us before we were even aware that they were in business. Recent examples of the latter were Luling and French. Every prospective licensee was offered a license under any of the radioactivity well surveying patents of Dresser Industries, Inc. and/or Well Surveys, Inc. which it desired, individually or collectively, upon negotiated reasonable terms. No licensee or prospective licensee was ever coerced to pay royalty on or for any operations covered by any expired patent.

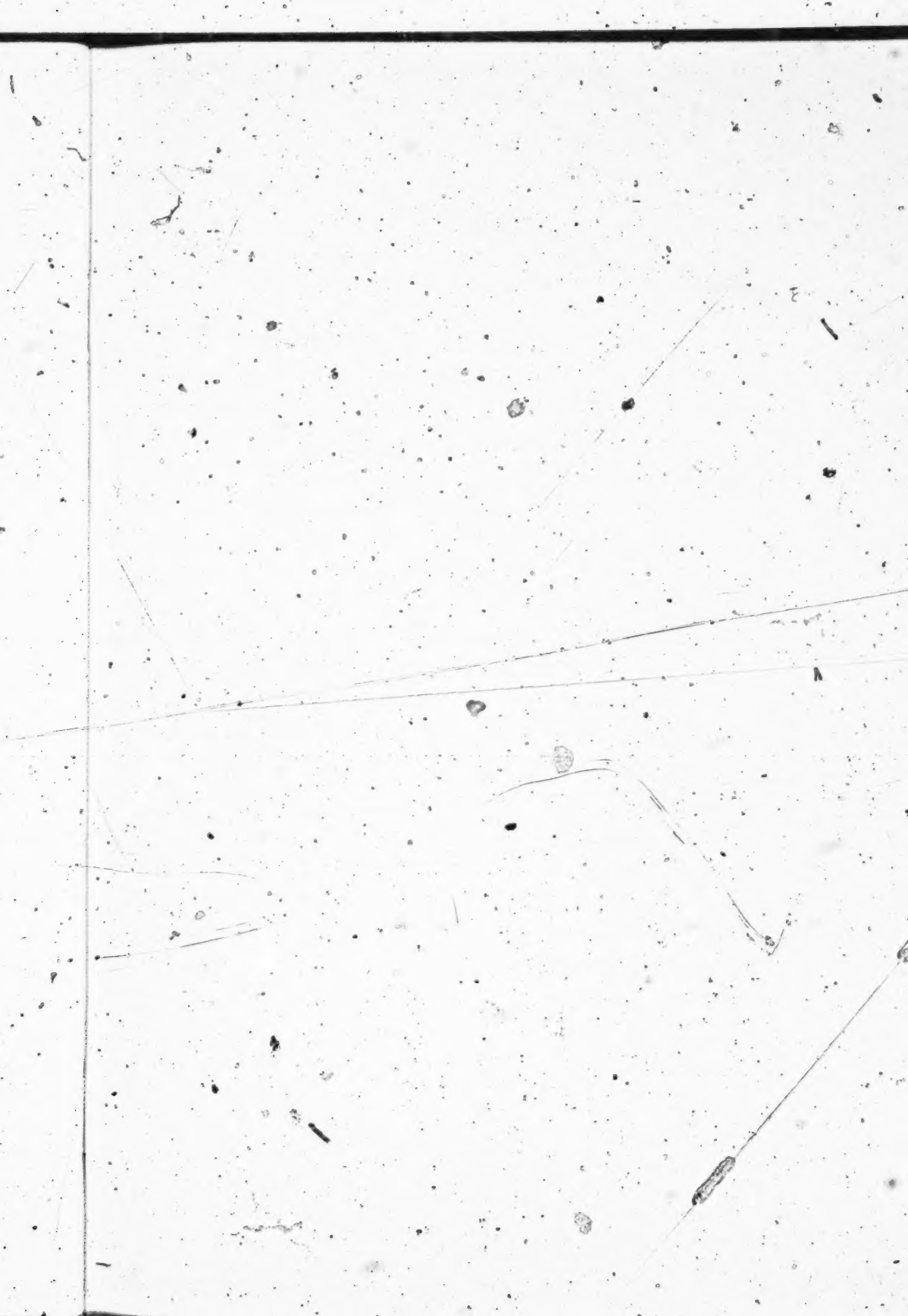
JAY G. BEAVER.

STATE OF TEXAS

Sworn to before me, and signed in my presence, this 17 day of June, 1967.

NEDIA LAUGHLIN,
Notary Public.

(Seal)



LIBRARY
SUPREME COURT, U. S.

FILED
OCT 7 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1968
No. 471

PERFO-LOG, INC.,

Petitioner,

vs.

WELL SURVEYS, INC., now DRESSER SYSTEMS, INC., and DRESSER INDUSTRIES, INC.,

Respondents.

Reply Brief in Support of Petition for Writ of Certiorari.

R. WELTON WHANN,
315 West Ninth Street,
Los Angeles, Calif. 90015,

W. D. HART,
P.O. Box 177,
Pauls Valley. Okla. 73075,

WELTON B. WHANN,
315 West Ninth Street,
Los Angeles, Calif. 90015,
Attorneys for Petitioner.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

SUBJECT INDEX

Page

I.

Respondents Do Not Attempt to Answer the "Question Presented"—They Beg It 1

II.

The "Question Presented" Goes to the Inherent Conflict Between the Decision of the Sixth Circuit in Rocform and the Decision of the Tenth Circuit on a Matter of Substantial Public Importance and Should Be Answered by This Court 8

INDEX TO APPENDIX

Cardinal Surveys Agreement 1

Recent Developments in Patent Misuse and Anti Trust, Rufus S. Day, Jr. 9

TABLE OF AUTHORITIES CITED

Cases	Page
Automatic Radio Mfg. Co. v. Hazeltine Research, Inc., 339 U.S. 827	9
Brulotte v. Thys Co., 379 U.S. 29	5, 7
McCullough Tool Company v. Well Surveys, Inc., 343 F. 2d 381	9
Rocform Corp. v. Acitelli-Standard Concrete Wall, Inc., 367 F. 2d 678	3, 8, 9
United States v. Loew's, Inc., 371 U.S. 38	7
United States v. Paramount Pictures, Inc., 344 U.S. 131	7

IN THE

Supreme Court of the United States

October Term, 1968
No. 471

PERFO-LOG, INC.,

Petitioner,

vs.

WELL SURVEYS, INC., now DRESSER SYSTEMS, INC., and DRESSER INDUSTRIES, INC.,

Respondents.

Reply Brief in Support of Petition for Writ of Certiorari.

I.

Respondents Do Not Attempt to Answer the "Question Presented"—They Beg It.

Respondents' assertion (Resp. Br. p. 2) that Petitioner "does not discuss—or even quote—the royalty provision of the license agreements", overlooks Respondents' license agreements to Cardinal Surveys Company[1] [R. 1690] and Booker Drilling Co., Inc. [R. 1581]. The Cardinal Surveys Co. and Booker Drilling Co. agreements which cover the Swift patent and

[1]For convenience and ready reference, the Cardinal Surveys agreement is appended hereto. Appendix pp. 1-8.

numerous other of Respondents' patents[2] require the payment of an undiminished royalty after the expiration of the important Swift patent, *irrespective of whether one of the other patents is used.* Paragraph 3.01 [R. 1693-4] of the Cardinal Surveys agreement provides:

> "3.01 Company agrees to pay WSI as royalty on each Radioactivity Survey conducted by Company during the term of this Agreement an amount equal to five per cent (5%) of gross charge (exclusive of mileage) made for the survey so conducted or a sum of ten dollars ($10.00), whichever is the greater." (Emphasis added).

Paragraph 3.02 [R. 1584-5] of the Booker Drilling agreement reads as follows:

> "3.02 Company agrees to pay WSI as royalty on each Radioactivity Survey conducted by Company during the term of this agreement an amount equal to six per cent (6%) of gross charge (exclusive of mileage) made for the survey so conducted or a sum of ten dollars ($10.00), whichever is the greater, provided that, until such time as fifty (50%) per cent of the total royalty thus payable shall equal the sum specified in Section

---

[2]Paragraph 1.06 [R. 1582, 1691-2] of the Cardinal Surveys Co. and Booker Drilling Co. agreements provides that "The term 'Patent Rights of WSI' as used herein shall mean any and all United States patents owned by WSI to the extent that such patents claim inventions disclosed in applications filed to the United States Patent Office on or prior to January 1, 1961, and to the extent that such patents would be infringed by a method or apparatus in the Field of Radioactivity Well Surveying." The Swift patent and the Peterson patent matured from applications filed in the U.S. Patent Office on March 22, 1946 and March 25, 1957, respectively [R. 1605, 1627].

3.01, Company shall actually pay WSI an amount equal to fifty (50%) per cent of the royalty thus payable."

Cardinal Surveys Co. and Booker Drilling Co. may terminate their agreements on September 1, 1968[3] [R. 1696] and April 1, 1969 [R. 1587], respectively. Those agreements contain no provision for diminution of royalty at the expiration of the important Swift patent. Under *Rocform,*[4] those agreements constitute misuse *per se,* as an effort to continue to collect royalty on the important Swift patent after its expiration. In direct conflict with *Rocform,* the Tenth Circuit has effectively held that those agreements constitute misuse *only if* the element of coercion is present, *i.e., only if* the licensees were not offered a license under any or all patents upon reasonable negotiated terms. Such a conflict should be resolved by this Court.

Respondents' contention (Resp. Br. p. 1) that Petitioner's statement of the Question Presented "attempts to read the controlling point entirely out of the case" is simply an attempt to create a false issue.

As the Tenth Circuit put it (Appendix[5] A p. 17), "The Swift patent covers a system of measuring radiation from the earth formations around a well casing and, at the same time, locating the collars of the casing as a positive indication of the depth at which particular radiation is measured."

---

[3]The Swift patent expired May 29, 1968.

[4]*Rocform Corp. v. Acitelli-Standard Concrete Wall, Inc.* (6th Cir. 1966), 367 F. 2d 678.

[5]As used herein "Appendix A" and "Appendix B" refer to the appendices to the Petition.

If a licensee of Respondents, such as Jetco, used an oil well surveying tool to measure radiation from the earth formations around a well casing, and at the same time, used the Peterson form of collar locator to locate the collars of the casing on *May 29, 1968,* the *last* day of the statutory 17-year term of the Swift patent monopoly, it would be required to pay Respondents "an amount equal to five percent (5%) of the gross charge (exclusive of mileage) made for the survey so conducted or a sum of ten dollars ($10.00), whichever is the greater" [806-7]:

Since admittedly[6] the Swift patent is an "important patent" and the Peterson patent is of "lesser importance", it is a necessary conclusion that a *major* portion of the 5% royalty is allocable to the *important* Swift patent and a minor portion only to the Peterson patent of "lesser importance".

If Jetco used the same oil well surveying tool including the Peterson form of collar locator on *May 30, 1968,* the day *after* the Swift patent expired on May 29, 1968, it would be required to *pay precisely the same royalty* as it paid the day before when the Swift patent was still alive.

A fortiori under the eight license agreements[7] the major portion of the 5% royalty allocable to the "im-

---

[6]Respondents admitted, "* * * we do, of course, recognize that, compared to Swift, Peterson is of lesser importance. * * *" (Respondents' Opening Brief before the Tenth Circuit pp. 10-11). In their Summaries of Patents, Respondents characterized the Swift patent as "the basic patent covering radioactivity well logging systems" and the Peterson collar locator as "but one of a number of casing collar locators that could be used" with the system of the Swift patent [R. 1592, 1594].

[7]Reference is to the eight license agreements upon which prime reliance was placed. See Items 11, 12, 14, 15, 16, 17, 18 and 21 of Appendix B pp. ii and iii.

portant" Swift patent is payable after Swift expired. Respondents (Resp. Br. p. 3) in their restatement of the Question Presented take no issue with the fact that Swift is "an important patent" and that Peterson is of "lesser importance".

Thus the dispositive fact is that these challenged agreements are "royalty agreements that project beyond the expiration date of a patent" and hence are "unlawful per se" *Brulotte v. Thys Co.* (1964), 379 U.S. 29.

It was on this basis that the District Court concluded:

> "9. The license agreements between plaintiff and Jetco, Star, French, Luling, Maroney, Petroleum, Shelwell and Titan constitute in effect an effort to continue to collect royalties on the Swift Patent after its expiration between (because) said agreements contain no diminution of license fee at the expiration of the important Swift Patent and contain no termination clause at the will of the licensee." (Appendix A p. 42)

This dispositive *fact* is not changed or altered by Respondents' convenient but inaccurate argument (Resp. Br. p. 6) that royalty is payable *only* on operations "which, if unlicensed, would infringe the Patent Rights of WSI during the term of the agreement". The semantic argument that these words in the royalty provision of the offensive license agreements effect a change in the "base" sufficient to save the agreements "although the royalty rate does not change" draws a line where no line exists. A critical reading of paragraph 3.02 of the eight license agreements immediate-

ly reveals that—contrary to Respondents' argument—after the expiration of Swift, there is no change in the royalty base in the sense that the royalty is payable on any different aspect or aspects of the radioactivity well survey conducted.

Paragraph 3.02 reads:

> "3.02 Company agrees to pay WSI as royalty on each Radioactivity Well Surveying operation conducted by Company, which if unlicensed, would infringe the Patent Rights of WSI during term of this agreement an amount equal to five percent (5%) of the gross charge (exclusive of mileage) made for the survey so conducted or a sum of ten dollars ($10.00), whichever is the greater." [R. 806-7].

The royalty base is the operation on which the royalty is payable. Under paragraph 3.02, the royalty is payable on *"each Radioactivity Well Surveying operation conducted* * * * which if unlicensed, would infringe the Patent Rights of WSI * * *" The amount of the royalty is "an amount equal to five percent (5%) of the gross charge (exclusive of mileage) made for the *survey so conducted* or a sum of ten dollars ($10.00), whichever is the greater." The import of paragraph 3.02 is unmistakable. Any use by a licensee, such as Jetco, of the Peterson form of casing collar locator—after the expiration of the Swift patent—in the performance of a radioactivity well logging operation requires the payment of a 5% royalty for the *entire* radioactivity well surveying operation.

The royalty base *does* change in the sense that, after the expiration of Swift, the royalty is payable on Peter-

son rather than on Swift. And this is exactly what the Tenth Circuit said:

> "Although the royalty rate does not change, the base for that rate changes because after the expiration of Swift, no royalty is payable unless the Peterson patent is used *in the logging operations.*" (Appendix A p. 20) (Emphasis added)

The immutable fact remains that the *same* number of dollars is payable as *royalty* for the same use of the same apparatus the day *after* the "important" Swift patent expired on May 29, 1968 as *was* payable the day *before* it expired.

There is thus exposed a further illegal consequence of the "change in the royalty base" upon which Respondents so strongly rely. That consequence is that under the questioned agreements, the "unimportant" Peterson patent does not stand on its own feet. If Jetco, after the expiration of the important Swift patent, uses the Peterson form of casing collar locator in the performance of a radioactivity well surveying operation, it is obligated to pay a royalty which is unrelated to the quality of the Peterson patent. It is obligated to pay a royalty—not on the casing collars located—but on the *entire* radioactivity well surveying operation. Peterson thus "borrows quality" from the "important" Swift monopoly and draws on *that* expired monopoly to extend the royalty payments on Swift illegally into the post expiration period. Such agreements are condemned by *United States v. Loew's, Inc.* (1962), 371 U.S. 38, 46, 47, *United States v. Paramount Pictures, Inc.* (1948), 344 U.S. 131, and *Brulotte v. Thys Co.*

In disregard of these controlling rulings, the Tenth Circuit held that "the relative importance of the patents

has no significance if a licensee is given the choice to take a patent alone or in combination on reasonable terms. Freedom of choice is the controlling question." (Appendix A p. 21).

These same considerations expose the direct conflict with the decision of the Sixth Circuit in *Rocform*. Respondents' attempt (Resp. Br. p. 13) to distinguish *Rocform* is summarized in the inaccurate representation that,

> "* * * In the instant case—unlike *Rocform*—there was a diminution of the royalty base at the expiration of Swift, and no royalty was payable thereafter except on operations in which the licensee freely chose to use one of the licensed patents."

But, as has been seen, this argument is a semantic ruse. The depositive *fact* is that the same royalty was payable on the *same* tool both before and *after* the Swift patent expired. Thus, by Respondents' own admission there is a direct conflict between *Rocform* and the decision below.

II.

The "Question Presented" Goes to the Inherent Conflict Between the Decision of the Sixth Circuit in Rocform and the Decision of the Tenth Circuit on a Matter of Substantial Public Importance and Should Be Answered by This Court.

The conflict between the decision of the Sixth Circuit in *Rocform* and the decision below is an important one in the significant field of package licensing upon which this Court has never spoken. Its resolution is important, not only because of the significance of the subject matter involved to the public generally, but also

because the conflict involves a plurality of decisions of this Court. Indeed, the decision below is in substantial part justified on the authority of *Automatic Radio Mfg. Co. v. Hazeltine Research, Inc.* (1950), 339 U.S. 827.

The Appendix hereto (pp. 9-18) contains portions of a treatise by counsel for Respondents, Rufus S. Day, Jr., entitled 'Recent Developments in Patent Misuse and Antitrust". Mr. Day's treatise emphasizes the inconsistency between *Rocform* and *McCullough*,[8] the confusion which exists with respect to the expired patent doctrine, and the need for untangling that confusion by this Court:

> *"If McCullough were the latest case, there would be a clear rule as to the legality of package licenses, in which some of the licensed patents expired during the nonterminable period of the license.* Those entered into voluntarily and without coercion would be legal, while those resulting from coercive practices on the part of the licensor would constitute misuse. (Appendix p. 14.)
>
> * * *
>
> In the course of its opinion, the court expressly approved a finding of the district court that Rocform had employed its important patent to 'coerce (or attempt to coerce) this defendant to purchase

[8]Mr. Day's reference to *McCullough* is the first *McCullough* decision, *McCullough Tool Company v. Well Surveys, Inc.*, 343 F. 2d 381. It is to be noted that the Tenth Circuit, (in the instant case) in declaring its disagreement with *Rocform*, expressly adhered to its decision in the first *McCullough* case (Appendix A p. 21).

the Rocform system, and thus to purchase other patents and unpatented materials and services.' *On this assumption, there would seem to be no inconsistency between Rocform and McCullough.*

However, the dissenting judge in Rocform makes the points that there was no basis in the record for any finding of coercion, that all Rocform had done was offer its regular form of contract to Acitelli, that Acitelli had refused it without suggesting any other, and that these facts did not amount to coercion.

These indications that the majority could not have regarded a finding of coercion as necessary to its decision *are reinforced by some of the broad language in the majority opinion. It is certainly arguable that the majority regarded misuse as inherent to any license agreement that does not provide for some diminution in royalty, or for a right in the licensee to terminate, whenever any important licensed patent expires. We are therefore faced with the question—in the light of all the cases, including Rocform—of how we should deal with the expiring patent problem in drafting a license agreement.*

My answer to this question is a conservative one. In some respects, it is different from what I would lay down as the law, if, as a judge, I had the opportunity to do so. *As counselors, not judges, we must remember that the expired patent doctrine is in a very fluid state, and is liable to further judicial extension. * * *"* (Emphasis added). (Appendix pp. 15-16.)

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

R. WELTON WHANN,
W. D. HART,
WELTON B. WHANN,
Attorneys for Petitioner.

Dated October 4, 1968.

APPENDIX.

[1690]

IMMUNITY AGREEMENT

THIS AGREEMENT is effective the 1st day of September, 1962 by and between WELL SURVEYS, INC. of Tulsa, Oklahoma, a corporation of Delaware, hereinafter called "WSI", and CARDINAL SURVEYS COMPANY, a corporation of Texas, hereinafter called "Company".

I.

Recitals and Definitions

1.01 WSI is possessed of certain patents and rights with respect to patents in the Field of Radioactivity Well Surveying, and Company desires the right to conduct Radioactivity Well Surveying operations for hire with immunity from liability for infringement of the "Patent Rights of WSI", as hereinafter defined.

1.02 The term "Radioactivity Well Surveying", as used herein, shall mean logging or surveying bore holes by the detection along a bore hole of neutral particles, charged particles or electromagnetc radiations coming either from the nucleus or from the outer particles of the atom or any other radioactive effects of radioactive radiations or combinations thereof emanating from the material within or traversed by the bore hole, whether these emanations represent a natural condition or result from irradiating the formation with neutral particles, charged particles or electromagnetic radiations or any combination of them or are the result of a treatment of the formation or the bore hole capable of giving rise to such emanations, and by the utilization of these received

radiations or particles to derive information concerning the nature or contents of the formation or the bore hole. The term "electromagnetic radiations" as used herein shall mean radiations having frequencies greater than that of ultraviolet light.

1.03 The term "Field of Radioactivity Well Surveying" as used herein shall mean all methods and apparatus used for Radioactivity Well Surveying.

1.04 The term "Radioactivity Survey" as used herein shall mean and include any logging and surveying operation in the Field of Radioactivity Well Surveying.

1.05 The term "Radioactivity Tracer Logging Service" shall mean either of the following: (a) a well logging service in which a radioactive tracer material is introduced into a single well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are subsequently conducted in said well to obtain information regarding the effect of said tracer material; or (b) a well logging service wherein a radioactive tracer material is introduced into a control well (wherein a Radioactivity Survey may or may not have been previously conducted) and in which one or more Radioactivity Surveys are conducted in one or more adjacent wells for the purpose of obtaining information regarding transmission of said tracer material from said control well to said adjacent wells.

1.06 The term "Patent Rights of WSI" as used herein shall mean any and all United States patents owned by WSI to the

[1692]

extent that such patents claim inventions disclosed in applications filed in the United States Patent Office on or prior to January 1, 1961, and to the extent that such patents would be infringed by a method or apparatus in the Field of Radioactivity Well Surveying.

II.

Grants

2.01 WSI, warranting that it has the right to do so, hereby grants to Company, upon the terms and conditions hereinafter stated, a non-exclusive, non-tranferable (except as hereinafter specified) immunity from any claim, suit or liability for infringement of Patent Rights of WSI arising from Radioactivity Well Surveying conducted by Company for others for hire during the term of this Agreement. Experimentation by Company in the Field of Radioactivity Well Surveying of a purely research or development nature without consideration of any kind flowing to Company from another shall be subject to immunity hereunder but shall not give rise to a claim for royalty.

2.02 Company shall have the right to extend to each of its customers with each Radioactivity Well Surveying operation conducted by Company the immunities granted under Section 2.01 under Patent Rights of WSI, such immunities being specifically restricted to the specific survey upon which royalty is paid under the provisions of Section 3.02.

[1693]

2.03 Since the Radioactivity Well Surveying described in Section 2.01 requires the use of instruments, the immunities therein granted shall include the right in Company to make instruments for its own use and

may be extended by Company to instrument manufacturers, provided Company shall advise WSI by notice in writing of any such extension, including the name and address of each instrument manufacturer to which extension has been made, and provided any such extension shall be specifically restricted to such instruments made for and actually used by Company pursuant to the terms and conditions of this Agreement and shall cease to exist if this Agreement is terminated or if the instrument is transferred to a stranger of this Agreement except in the event such transferee has a license or immunity under Patent Rights of WSI to use such instrument, in which event the instrument shall be considered as having been made for such transferee.

III.

Payments

3.01 Company agrees to pay WSI as royalty on each Radioactivity Survey conducted by Company during the

[1694]

term of this Agreement an amount equal to five per cent (5%) of gross charge (exclusive of mileage) made for the survey so conducted or a sum of ten dollars ($10.00), whichever is the greater.

3.02 In the event that a service involving Radioactivity Well Surveying is one of a combination of several different services conducted by Company for the same customer on the same setup, at the same well and for a single price which is different from the total of the individual charges customarily made by Company for such services if performed separately, the

"gross charge" for determining the royalty payable on such service involving Radioactivity Well Surveying shall be that proportion of the single price charged for said combined service which the individual charge customarily made by Company for the particular service involving Radioactivity Well Surveying is of the total of the individual charges made by Company for each of such services if performed separately.

3.03 For the purposes of Section 3.02, a Radioactivity Tracer Logging Service shall be construed as "on the same setup" and "at the same well" even though successive setups or a plurality of wells are actually employed in rendering such a service.

3.04 On or before the 20th day of each January, April, July and October, Company shall furnish WSI with a report in writing setting forth the following information pertaining to each Radioactivity Well Survey performed by Company during the

[1695]

preceding calendar quarter:

(a) Customer;

(b) Invoice Number;

(c) Date of Invoice;

(d) Amount on which royalty is payable;

and a summary including:

(e) Total, for all well surveys, of amounts specified in Item (d) above;

(f) Total royalty payable (Item (e) multiplied by royalty rate).

Each such statement shall be accompanied with payment for the full amount of the total royalty payable for the quarter in question.

3.05 Company shall fix charges for surveying operations conducted hereunder in its sole discretion but agrees that royalty payable hereunder shall not be less than (a) the amount which would be payable provided such charges were commensurate with the cost and value of said operations, or (b) the amount which would be payable upon its published charges for such services, whichever is greater.

3.06 Company shall keep records adequate to verify the reports and payments made pursuant to Section 3.04, and WSI shall have access during regular business hours to Company's records to the extent and only to the extent necessary to verify said reports and payments.

[1696]

IV.

Termination

4.01 If Company shall neglect or fail to render reports and make payments as and when due hereunder or shall otherwise be in default of any obligation under this Agreement, WSI shall have the right to give written notice thereof to Company, and if within sixty (60) days from and after the date of such notice Company shall not have cured such default, then WSI may, at its option, cause this Agreement to terminate forthwith by giving written notice to that effect to Company.

4.02 Company may terminate this Agreement as of the fifth anniversary date hereof or as of any successive anniversary date thereafter by giving WSI written notice of cancellation at least sixty (60) days prior to the anniversary date on which cancellation is to take effect.

4.03 Unless otherwise terminated pursuant to the provisions hereof, this Agreement shall continue in full force and effect until the expiration date of the last patent to expire under which Company is granted immunity by this Agreement.

4.04 Termination of this Agreement shall not affect the obligations of Company to make any payments which shall have accrued up to the date of such termination, and the fact that WSI shall not have terminated this Agreement pursuant to Section 4.01 because of one or more defaults by Company shall not prejudice the right of WSI to effect termination for a continuing or subsequent default.

[1697]

V.

Miscellaneous

5.01 Company shall not be estopped to contest the validity of any patent included in Patent Rights of WSI.

5.02 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, and Company may assign the rights and privileges herein granted to the successors in ownership of substantially all of its Radioactivity Well Surveying business, provided any such successors shall subscribe to the terms and conditions herein, but this Agreement shall not be otherwise assignable by Company without the written consent of WSI.

5.03 The address of the parties hereto, for the purposes of notices, payments and other communication provided for herein, shall be as follows:

WELL SURVEYS, INC.
P. O. Box 1799
Houston 1, Texas

CARDINAL SURVEYS COMPANY
P. O. Box 2049
Odessa, Texas

[1698]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their proper officers duly authorized and their corporate seals to be affixed as of the date first named herein.

WELL SURVEYS, INC.
By Jay G. Beaver
Vice President

ATTEST:
/s/
Secretary
(Seal)

CARDINAL SURVEYS COMPANY
By /s/
President

ATTEST:
/s/
~~Secretary~~ Ass't Secretary

RECENT DEVELOPMENTS IN PATENT MISUSE AND ANTITRUST.

Rufus S. Day, Jr.

1968
PATENT LAW ANNUAL
Continuing Legal Education Center
of
The Southwestern Legal Foundation
Dallas, Texas

Royalties Under Expired Patents.

In practice, the problem of royalties under expired patents is often closely related to that of package licensing, and many of the leading decisions have been relevant to both issues.

The doctrine that it is a patent misuse to extend the payment of royalty beyond the expiration of a patent is of recent origin. It is not even mentioned in the *Attorney General's Report* of 1955.[20] Indeed, as late as 1958, Ridsdale Ellis,[21] was able to entitle Section 10 of his treatise: "Agreement to Pay Royalties after the Patent Has Expired Is Valid and Binding," and there is no question that the Second Circuit cases he cited supported his conclusion.

However, a few years before, the Supreme Court had decided *Scott Paper Co. v. Marcalus.*[22] As you will recall, that case held that the assignor of a patent was not estopped by his assignment from defending a suit for infringement of the assigned patent, on the

---

[20]N. 7 *supra.*

[21]Ellis, *Patent Licenses* (3d ed. 1958).

[22]326 U.S. 242 (1945).

ground that the alleged infringing device was that of a prior art patent. In the course of its opinion, the Supreme Court restated very strongly the policy of the patent laws that on expiration of the patent, the invention is dedicated to the public. Specifically, it stated that "the patent laws preclude the patentee of an expired patent and all others including petitioner from recapturing any part of the former patent monopoly."[23]

In line with this approach, although it did not cite *Scott*, the Third Circuit, in its decision in 1959, in *Shatterproof*, after holding that Securit had misused its patents by mandatory package licensing, made the following further statement:

> "We conclude also, and quite apart from all of the foregoing, that Paragraph 8(a) of Securit's Standard Licensing Agreement which provides that that agreement shall continue 'in full force and effect to the expiration of the last to expire of any' of Securit's patents set out in 'Schedule A' constitutes a patent misuse for it extends the payment of royalties of patents under patents which may expire to the expiration date of the patent most recently granted to Securit."[24]

The court further indicated that a clause permitting the licensee to terminate at any time after one year from date did not help the situation, because it demanded "renunciation of all patents, whether wanted or unwanted under the license."[25] This was true under the facts of *Shatterproof*, because, as you will recall, the

---

[23] *Id.* at 256.

[24] 268 F.2d at 777.

[25] *Ibid.*

licensor's policy was one of mandatory package licensing.

Three years later, the Third Circuit had the opportunity to set forth fully the theoretical basis of its brief statement in *Shatterproof*. *Ar-Tik Systems, Inc. v. Diary Queen*,[26] was an action by the licensor of a single patent to enforce an agreement to continue payment of royalties after expiration of the patent. The court reviewed the Second Circuit cases cited in Ellis' treatise, and disapproved them in view of the Supreme Court's language in *Scott* and the Third Circuit's own decision in *Shatterproof*. It concluded that the agreement was an attempt to extend the patent monopoly by the exaction of royalties after expiration, and, as such, was unenforceable.

Two years later, the decision and reasoning of the Third Circuit in *Ar-Tik* was expressly approved by the Supreme Court in *Brulotte v. Thys Co.*[27] So far as is here relevant, the facts in *Brulotte* were similar to those in *Ar-Tik*, except that the licensee's machine embodied seven licensed patents, not just one, and the licensor attempted to continue to collect a royalty after all seven had expired. Relying on both *Scott* and *Ar-Tik*, the Supreme Court held "that after expiration of the last of the patents incorporated in the machine 'the grant of the patent monopoly was spent', and that an attempt to project it in another term by continuation of the licensing agreement was unenforceable."[28]

The decisions in *Ar-Tik* and *Brulotte*, although they amount to direct repudiation of the earlier cases,

---

[26]302 F.2d 496 (3d Cir. 1962).

[27]379 U.S. 29 (1964).

[28]*Id.* at 33

are easily understood. In both of them, royalty payment was continued past the expiration date of all the patents licensed, and the court, not unreasonably, found an attempt to extend the patent monopoly beyond its expiration. The decision in *Shatterproof*, in which the doctrine was first announced, is not so transparent. The license offered in *Shatterproof* included a considerable number of patents. It contained the frequently used provision that, unless earlier terminated, the license should remain in effect until the expiration of the last expiring patent. The vice found by the Third Circuit was not the continuation of royalty payments after all the licensed patents had expired, as it was in *Brulotte* and *Ar-Tik*, but the failure to reduce the royalty payment as the patents expired. This failure permitted the inference that some part of the identical continuing royalty was still being paid for the patents that had expired. Does *Shatterproof* mean that any package license which includes patents which expire during its term is a misuse, unless it provides for some reduction in royalty as the patents expire?

A negative answer to this question was given by the Tenth Circuit in *McCullough Tool Co. v. Well Surveys, Inc.*,[29] which we have already discussed in its package licensing aspects. In that case, as you will recall, the licensor exercised "salesmanship" to license the whole package, but was willing to, and in fact did, negotiate licenses on a reasonable basis under individual patents or groups of patents, if the licensee did not want the package. The licensor was therefore held not guilty of misuse. Most of the licenses it negotiated ran for

[29] 343 F.2d 381 (10th Cir. 1965), *cert. denied* 383 U.S. 933 (1966).

five years before the licensee had the right to terminate and, as is usually the case where a considerable package of patents is licensed, some important patents expired during the nonterminable period. In most of the license agreements there was no provision for reduction of royalty as patents expired, and the defendant contended that the patent owner was guilty of misuse under *Shatterproof*, *Ar-Tik*, and *Brulotte*.

The Tenth Circuit rejected this contention. It first noted that in *Automatic v. Hazeltine*,[30] in which the Supreme Court had indicated that voluntary package licensing was proper, many of the patents expired, without change in the royalty rate, during the nonterminable period of the license. It distinguished *Brulotte* and *Ar-Tik* because the license agreements in those cases "attempted to extend the period for paying royalties beyond the date of expiration of the last of the patents covered by the agreement."[31] It distinguished *Ar-Tik* and *Shatterproof* because the licensee was coerced into taking the license agreement offered "by virtue of the licensor's refusal to grant anything but a package license covering all the patents."[32] Its conclusion was that a "license agreement covering a package of patents, *voluntarily entered into by the parties*, [was not] unlawful by reason of the fact that the royalties payable thereunder are based upon a package of patents, some of which have expired or will expire during the effective period of the agreement."[33]

---

[30] Automatic Radio Co. v. Hazeltine, 339 U.S. 827 (1950).

[31] 343 F.2d at 410.

[32] *Ibid.*

[33] *Id.* at 409 [Emphasis added].

If *McCullough* were the latest case, there would be a clear rule as to the legality of package licenses, in which some of the licensed patents expired during the nonterminable period of the license. Those entered into voluntarily and without coercion would be legal, while those resulting from coercive practices on the part of the licensor would constitute misuse.

Is there anything to the contrary in the recent decision of the Court of Appeals for the Sixth Circuit in *Rocform Corp. v. Acitelli-Standard*?[34]

In that case, the patent owner apparently had only one "important" patent, and it made no offer to license it on an individual basis. This patent covered the "Rocform System" of pouring concrete basement walls, and was to expire in 1967. The patent owner also had other patents, with later expiration dates, which had to be used in the system, but which the court did not characterize as important. It was Rocform's policy to license the use of the "Rocform System" for a flat payment for each basement cast. This payment was not to be reduced when the "important" patent expired, nor was the licensee given the right to terminate at that time. Apparently, the agreement provided no termination date, so that the payments would continue until the expiration of the last licensed patent.

Rocform had licensed 189 builders under this standard form of agreement, and offered it to Acitelli. Acitelli rejected it without comment. That is, it did not request a license under only the important patent, nor did it request a license under different terms. It commenced infringing operations, and, when sued for

[34] 367 F.2d 678 (6th Cir. 1966).

infringement of the important patent, it defended on grounds of misuse.

The Sixth Circuit held, with one judge dissenting, that Rocform was guilty of misuse, basically on the ground that it had grouped "one important patent (about to expire) . . . with others of longer duration for 'leverage.'"[35] It stated:

> "We believe such a contract, when it contains no diminution of licensing fee at the expiration of the most important patent and contains no termination clause at the will of the licensee, constitutes, in effect, an effort to continue to collect royalties on an expired patent."[36]

In the course of its opinion, the court expressly approved a finding of the district court that Rocform had employed its important patent to "coerce (or attempt to coerce) this defendant to purchase the Rocform system, and thus to purchase other patents and unpatented materials and services."[37] On this assumption, there would seem to be no inconsistency between *Rocform* and *McCullough*.

However, the dissenting judge in *Rocform* makes the points that there was no basis in the record for any finding of coercion, that all Rocform had done was offer its regular form of contract to Acitelli, that Acitelli had refused it without suggesting any other, and that these facts did not amount to coercion.[38]

These indications that the majority could not have regarded a finding of coercion as necessary to its deci-

---

[35] *Id.* at 681, 151 U.S.P.Q. at 308.

[36] *Ibid.*

[37] 367 F.2d at 680.

[38] *Id.* at 684.

sion are reinforced by some of the broad language in the majority opinion. It is certainly arguable that the majority regarded misuse as inherent to any license agreement that does not provide for some diminution in royalty, or for a right in the licensee to terminate, whenever any important licensed patent expires. We are therefore faced with the question—in the light of all the cases, including *Rocform*—of how we should deal with the expiring patent problem in drafting a license agreement.

My answer to this question is a conservative one. In some respects, it is different from what I would lay down as the law, if, as a judge, I had the opportunity to do so. As counselors, not judges, we must remember that the expired patent doctrine is in a very fluid state, and is liable to further judicial extension. With these apologies, my suggestions are as follows:

1. Obviously, a patent owner must make no license agreement—even though the licensee is willing to do so—under which the royalty for a single patent is payable beyond its expiration date, or under which the royalty for a group of patents is payable beyond the expiration date of the last patent.

2. Whenever a patent owner enters a license agreement in which one or more, but not all, of the patents will expire during the term of the license, special precautions are required.

The safest procedure, in my judgment, is to give the licensee, for a limited period after the expiration of any licensed patent that he uses, the right to terminate the license and the option, if he so desires, to take a license under any of the patents then remaining unexpired, at a reasonable, negotiated royalty.

This requires a little amplification. All that *Rocform* says, at the most, is that the licensee must be given either a decrease in royalty, or a right to terminate the agreement, on the expiration of an *important* patent. Why give him the right to terminate on expiration of *any* licensed patent that he uses? My answer is that, if the licensee is using a patent, we cannot be sure that a court will hold the patent to be "unimportant."

Why give the licensee, not only the right to terminate the agreement, but the option to take a new license on a reasonable basis under any unexpired patents he desires? The answer is that in *Shatterproof* the court indicated that a right to terminate, where no alternative license was available, would only aggravate the licensee's hardship, because, in order to avoid paying for the expired patent, he would be forced to give up his license under the patents he still needed.

Following is a provision I have frequently used:

"Licensee may terminate this agreement on the expiration of any patent licensed hereunder by giving written notice of termination to Licensor within 60 days prior to such termination. On receiving such notice, if Licensee so requests therein, Licensor shall negotiate with Licensee a nonexclusive license at a reasonable royalty rate under those patents licensed herein which are unexpired at the date of the termination, and under which Licensee then desires a license."

Would it be an acceptable alternative solution merely to exclude from the royalty base, as each licensed patent expires, operations that are covered only by that patent?

While this would not reduce the royalty rate when the patent expired, it would actually or potentially decrease the *base*. In my judgment, this alternative meets the test of *Rocform*, because it operates to reduce the royalty when the patent expires, and should be sufficient to avoid misuse. There is, however, a recent decision of the District Court for the Western District of Oklahoma,[89] which casts some doubt on this conclusion. It is now pending on appeal in the Tenth Circuit,[89a] and, until the issues in the appeal are resolved, I would be a little hesitant, in drafting a new license agreement, to rely merely on exclusion from the royalty base.

A further question is whether violation of the expired patent rule could be an antitrust violation, which might involve a treble damage liability, as well as a patent misuse. It seems to me that, whenever the desire of the applicant for a license under a particular patent is used as a lever to induce him to agree to continue to pay royalties—whether for that patent, or for other patents, or for unpatented services—after its expiration, there is a serious possibility of antitrust violation and treble damage liability. The decision of the Seventh Circuit in *Zenith*, in the field of mandatory package licensing, seems applicable.

---

[89]Well Surveys, Inc v. Perfo-Log, —F. Supp.—, 154 U.S.P.Q. 313 (W.D. Okla. 1967).

[89a]The district court decision was reversed in Well Surveys, Inc. v. Perfo-Log, on June 4, 1968, —F.2d— (10th Cir. 1968).

LIBRARY
PREME COURT. U. S.

Office-Supreme Court, U.S.
FILED
OCT 14 1968
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1968.

No. 471.

PERFO-LOG, INC.,
Petitioner,

vs.

WELL SURVEYS, INC. (now DRESSER SYSTEMS, INC.) and DRESSER INDUSTRIES, INC.,
Respondents.

SUPPLEMENTAL BRIEF OF RESPONDENTS
In Opposition to Petition for Writ of Certiorari.

RUFUS S. DAY, JR.,
RICHARD M. DONALDSON,
1800 Union Commerce Building,
Cleveland, Ohio 44115,

JAMES A. PEABODY,
100 Park Avenue Building,
Oklahoma City, Oklahoma 73102,

ROBERT K. SCHUMACHER,
2157 Field Building,
135 South LaSalle Street,
Chicago, Illinois 60603,
Attorneys for Respondents.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

In the Supreme Court of the United States

OCTOBER TERM, 1968.

No. 471.

PERFO-LOG, INC.,

Petitioner,

vs.

WELL SURVEYS, INC. (now DRESSER SYSTEMS, INC.) and DRESSER INDUSTRIES, INC.,

Respondents.

SUPPLEMENTAL BRIEF OF RESPONDENTS In Opposition to Petition for Writ of Certiorari.

We are filing this Supplemental Brief because Petitioner in its Reply Brief argues points not made in its Petition. One of these was apparently not available at the time the Petition was filed.

1. The Cardinal Surveys and Booker Drilling License Agreements.

These agreements, to which Petitioner devotes the first few pages of its Reply Brief, were not even mentioned in its Petition. They are not mentioned in Petitioner's Motion for Summary Judgment, which was based solely on the licenses under only the Swift and Peterson patents (R. 768). A reading of the Conclusions of Law of the District Court (R. 1772-1774) and its Judgment (R. 1775) indicates that it did not base its Summary Judgment for Petition on the Cardinal and Booker licenses, but only on the eight licenses under Swift and Peterson, on which

Petitioner's Motion was based, which were licenses of a different kind.

The fact is that both the Cardinal and the Booker licenses were agreements of the type referred to in Respondents' main brief (first full paragraph, page 4) and in the Beaver Affidavit (Appendix to Respondents' brief, page 18), which were entered into by a few licensees who wanted a license under *all* of WSI's 80 or 90 patents in the radioactivity well logging field. In these agreements the licensee obtained the right to use any of WSI's patents and agreed to pay a royalty on its total receipts from radioactivity well logging, regardless of the use or expiration of any particular patent. As pointed out in our main brief, most of the licensees preferred to take a license either under Swift alone, or Swift and a few other patents, and to pay royalty only on operations that would infringe a licensed patent.

In other words, the Cardinal and Booker licenses were not the basis of the summary judgment which Petitioner seeks to have reinstated; and, in any event, they were agreements of the same type approved in *Automatic v. Hazeltine,* 339 U.S. 827 (1950), and were substantially identical with the WSI licenses approved in the original *McCullough* case (343 F. 2d 381, 10 Cir., 1965, *cert. denied* 383 U.S. 933, 1966).

2. The Change in Royalty Base on the Expiration of Swift.

Petitioner finally acknowledges that, as held by the Court of Appeals, the royalty base of the licenses under Swift and Peterson does change on the expiration of Swift, in that the royalty is payable on Peterson rather than on Swift, and that no royalty is payable except on logging operations in which Peterson is used (Reply Brief, pages 6, 7).

However, Petitioner argues that the Peterson patent still "does not stand on its own feet," but somehow "'borrows quality' from the 'important' Swift monopoly and draws on *that* expired monopoly to extend the royalty payments on Swift illegally into the post-expiration period" (Reply Brief, page 7).

These arguments are incomprehensible to us. Petitioner admits that no royalty is payable after the expiration of Swift unless Peterson is used. The Record is clear that at least five alternatives to Peterson are available (R. 889); that there is no difficulty in changing from the Peterson device to one of the alternative forms (Hawthorne deposition, R. 2176-2178); and that Perfo-Log in fact did so (R. 2178). The Record is also clear that no licensee was compelled to take Peterson, and that about 60 licensees elected to take Swift alone (R. 891-896).

There is obviously no drawing on the expired monopoly of Swift after its expiration. After Swift expires, the licensee pays no royalty on *any* operation, unless he elects to use the Peterson device in *that* operation. If he does not want to use the Peterson device, or thinks the royalty for it too high, alternative devices are available to him, and the change is an easy one. If, in this situation, the licensee decides to use Peterson and pay the royalty, he does so presumably because he wants to use it and believes it is worth the royalty charged. In other words, Peterson *does* stand on its own feet, the royalty *is* related solely to the value of Peterson, and Peterson borrows no quality from Swift or any other source.

If, on the other hand, the licensee decides not to use Peterson, no royalty is payable—or, in other words, the operation is excluded from the base on which the royalty is paid.

3. Counsel's Article in the Patent Law Annual.

Petitioner appends to its Reply Brief an article by counsel for WSI appearing in the 1968 Patent Law Annual of the Southwestern Legal Foundation, discussing, among other things, the original *McCullough* case and the *Rocform* case.

A reading of the article will indicate that, even though it was written before the Tenth Circuit decision in the instant case, its conclusions are substantially the same as those drawn in our main brief.

In both the article and the brief, we indicated a possible difference, at least in language, between the views of the Tenth Circuit and those of the Sixth Circuit. The difference is that the Tenth Circuit believes that, even if there had been no diminution in royalty—either in the rate or in the base—at the expiration of Swift, there would still be no misuse if the agreement was voluntarily entered into. On the other hand, it is arguable—though by no means clear—that the Sixth Circuit believes that, if there were no diminution in royalty at the expiration of an important patent, there would be misuse, regardless whether the agreement was voluntarily entered into (Respondents' main brief, page 13; Petitioner's Reply Brief, Appendix, page 16).

However this may be, as we pointed out in the next last paragraph of our main brief, the question as to which the possible difference exists is not presented by the instant case. In this case, as the Court of Appeals found, there was a diminution of the royalty base in the licenses under Swift and Peterson at the expiration of Swift, and no royalty was payable thereafter except on operations in which the licensee freely chooses to use Peterson.

This point is discussed in general terms at the end of our article, as follows (Reply Brief, Appendix, pages 17, 18):

"Would it be an acceptable alternative solution merely to exclude from the royalty base, as each licensed patent expires, operations that are covered only by that patent?

"While this would not reduce the royalty rate when the patent expired, it would actually or potentially decrease the *base*. In my judgment, this alternative meets the test of *Rocform*, because it operates to reduce the royalty when the patent expires, and should be sufficient to avoid misuse."

The view above expressed is in accord with the Report of the Attorney General's National Committee to Study the Antitrust Laws (1955), where it is stated at page 240:

"* * * where a substantial group of patents are offered at a flat royalty rate, the deletion of one or several specified patents need not affect the rate. Rather the benefit to the licensee will lie in other factors such as exclusion of products subject to the several patents from the royalty computation."

We submit that the Court of Appeals was clearly right in reversing the summary judgment for Petitioner rendered by the District Court, and that the Petition herein should be denied.

Respectfully submitted,

RUFUS S. DAY, JR.,
RICHARD M. DONALDSON,
1800 Union Commerce Building,
Cleveland, Ohio 44115,

JAMES A. PEABODY,
100 Park Avenue Building,
Oklahoma City, Oklahoma 73102,

ROBERT K. SCHUMACHER,
2157 Field Building,
135 South LaSalle Street,
Chicago, Illinois 60603,
Attorneys for Respondents.